P.L. 101–237 AS IT APPLIES TO DEBT WAIVERS AND ATTORNEY FEE RESTRICTIONS IN REGARD TO LOAN GUARANTY INDEBTEDNESS

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

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P.L. 101-237 AS IT APPLIES TO DEBT WAIVERS AND ATTORNEY FEE RESTRICTIONS IN REGARD TO LOAN GUARANTY INDEBTEDNESS

THURSDAY, MARCH 14, 1991

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING AND MEMORIAL AFFAIRS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:32 am., in room 334, Cannon House Office Building, Hon. Harley O. Staggers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Staggers, Harris, and Brewster.

OPENING STATEMENT OF CHAIRMAN STAGGERS

Mr. STAGGERS. The Subcommittee on Housing and Memorial Affairs will come to order.

This morning we will meet to hear testimony on implementation of Public Law 101-237 as it applies to debt waivers. We will also be discussing a legislative proposal affecting attorney fee restrictions in regard to the loan guarantee indebtedness.

I must say at the outset that I am pleased that the majority of the testimony before us indicates that the new waiver criteria has had a positive effect in general. It was just 1 year ago that we heard from two active-duty members whose lives had been seriously disrupted after the homes they sold went to foreclosure. One individual stated that he was about to lose his security clearance, and the other's credit had been so adversely impacted that he could not buy a home for his young family. These were not isolated cases. The committee was receiving a substantial number of letters weekly outlining similar scenarios.

Although we are pleased with the Department's training efforts, we are of the opinion that the beneficial intent of the law is not being applied consistently. Therefore, we hope that the Department will continue working with its field stations in this regard.

On the question of restricting attorney fees for loan guaranty cases, this is an issue which I hope to rectify. There is a clear distinction between a benefits claim initiated by a veteran and a debt collection proceeding initiated against a veteran. This matter is further complicated by the individual State laws affecting foreclosure.

Between 1974 and 1986, the Department's benefits manual expressly exempted debt collection proceedings from attorney fee lim-

itations. I am hopeful that this hearing will establish the need for a return to this policy.

Before I call the first panel, I would, without objection, have all the written statements entered into the record, so feel free to summarize, and also, because of a conflict, most of the Republican members are, I guess with the conference, and with family emergencies, and also with traveling to Kuwait, a very important mission. None of the Republicans will be with us today, but Mr. Burton does have a prepared statement, had without objection, his statement will be entered into the record. I hear no objection, so both of those are so ordered.

[The prepared statement of Hon. Dan Burton appears at p. 29.]

Mr. STAGGERS. Our first panel will be Mr. Thompson, Mr. Kane, Mr. Pedigo, Mr. Mulhern, and Mr. McCann. We will start, I guess, with Mr. McCann. Feel free to summarize your testimony. It would be very much appreciated.

STATEMENT OF S. ANTHONY MCCANN, ASSISTANT SECRETARY, FINANCE AND PLANNING, DEPARTMENT OF VETERANS AFFAIRS ACCOMPANIED BY JOHN H. THOMPSON, ASSISTANT GENERAL COUNSEL; JAMES P. KANE, ASSISTANT GENERAL COUNSEL; KEITH PEDIGO, DIRECTOR, LOAN GUARANTY SERVICE; PETER T. MULHERN, STAFF OFFICER, WAIVERS AND COMPROMISES; AND DAN OSENDORF, DIRECTOR, DEBT MANAGEMENT STAFF

STATEMENT OF S. ANTHONY MCCANN

Mr. MCCANN. Thank you, Mr. Chairman. You have already introduced the members of the panel, so I will not do so, and as you indicated, copies of our testimony will be submitted for the record.

Also at the table is Dan Osendorf, who is in charge of debt collection for the Veterans Benefits Administration.

As the VA's Chief Financial Officer, I am responsible for the Department's debt collection policy. Inherent in debt management are procedures for waiving debts.

Recent legislation, such as the Debt Collection Act, and several provisions of several of the reconciliation bills, have led to strict requirements for vigorous debt collection by each Federal agency. At the same time, this committee has given us instructions, through legislation, to consider waiver of debts owed by veterans and other beneficiaries.

It is not an easy task, Mr. Chairman, to balance both of these requirements, but I believe we have established a waiver policy that fully meets the intent of Congress. Our waiver program is based on the application of equity and good conscience. Recent legislation did not revise this standard, but instead, changed the elements that preclude its application.

In order to effectively implement the policy, we de-emphasized the impact of veteran's fault on our waiver policy, while increasing the emphasis on the role of other elements under the standard of equity and good conscience. Our goal was to create a standard in which all elements had equal weight in our decisionmaking process.

In February 1990, we issued instruction that introduced the new waiver standards and also introduced a new approach to the waiver consideration process. We instructed the members of our Committee on Waivers and Compromises to use a more flexible approach when evaluating the elements under the standard of equity and good conscience.

Last April we published a new training guide for the committees, which incorporated new waiver standards and a decisionmaking approach, and also provided numerous case examples of both.

In May we conducted training sessions for committee members who, in turn, provided training for other members at their individual stations. The training sessions consisted of an explanation and analysis of the legislative change, as well as a thorough discussion of the instructions and training guide.

In December, we published additional instructions for reconsideration of final waiver denials made prior to new waiver standards. We have also revised our regulations on the standards for waiver considerations. This revision is currently in the concurrence process.

Finally, in January and February of this year, we gave presentations on the new standards at both the VBA Financial Officers Conference and the American Legion Department Service Officers School.

Implementation of these new standards has led to a substantial increase in the number of waiver requests that we have granted. In fiscal year 1989 we granted 21 percent of waiver requests considered. In 1990, we granted 56 percent. For the first quarter of 1991, we granted 68 percent.

In dollar terms, Mr. Chairman, in 1989 we waived $35.4 million in debts. In 1990, we waived $125 million, almost 126. In 1991, for the first quarter, we are at almost $60 million, or an annual rate of something in the neighborhood of $240 million in waived debts.

Mr. Chairman, that concludes my testimony. I or the members of the panel would be pleased to try and answer any questions we can.

[The prepared statement of Mr. McCann appears at p. 31.]

Mr. STAGGERS. Thank you. Last year, the Senate introduced Senate Bill 2615, legislation to clarify that the prohibition on payments on attorney fees in connection with the Department of Veterans Affairs Benefits proceedings apply where the individual is applying for benefits.

Your view on this bill stated that the DVA does not have any objections to the payment of attorney fees for service rendered in proceedings at the administrative level regarding loan guarantee indebtedness, including the waiver of recovery of such indebtedness.

Do you still hold that view?

Mr. MCCANN. I believe we do, but let me let Mr. Thompson respond.

Mr. THOMPSON. Yes. Mr. Chairman, as you know, we do not as yet have a formal position on your proposal this year. However, you correctly indicated that last year we indicated we have no objection to a proposal such as you have drafted, and I am certainly not aware of anything that would change that position.

Mr. STAGGERS. I have circulated the draft legislation affecting the restriction of attorney fee on loan guaranty indebtedness, and I assume that you all would have that. Do you believe the language would be effective or do you have any other recommendations that you might want to share with us now?

Mr. THOMPSON. We have reviewed the technical sufficiency of it, and we are satisfied that it would do what you intend.

Mr. STAGGERS. Do you have any other recommendations that we expand or narrow, or any other?

Mr. THOMPSON. I think we have not, at this point.

Mr. STAGGERS. Okay. Mr. Harris.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. McCann, are amounts waived reported to the IRS?

Mr. MCCANN. I do not believe they are at this point, but let me ask Dan.

Mr. OSENDORF. Mr. Vice Chairman, loan guaranty debts that are waived are not reported to IRS. Education and compensation and pension over the dollar value of $600.00 are.

Mr. HARRIS. Over the dollar value of $600.00?

Mr. OSENDORF. Correct.

Mr. HARRIS. Well, given the fact that the underlying benefits themselves, in the case of compensation and education, are not subject to taxation, what is the rationale for reporting any of the amount waived to the IRS?

Mr. OSENDORF. OMB sent a memo to all agencies in 1985 instructing them that they should be reporting waiver of these debts to Internal Revenue Service, and they specified an IRS code. We are not aware that it requires Federal agencies to report overpayments or waivers of debts, but they instructed us to, and we have been operating under that instruction.

Mr. HARRIS. Prior to implementation of Public Law 101-237, what percentage of loan guaranty debts did you collect?

Mr. OSENDORF. I would say we probably collected 1 to 2 percent.

Mr. HARRIS. And out of this, how much was from existing VA benefits, such as compensation, pension, or education?

Mr. OSENDORF. That percentage has risen. I just looked at it last fiscal year. I think we collected $69 million on loan guaranty debts. $45 million came from cash collections. The balance, which would be $24 million, came from offsets.

Mr. HARRIS. How much was from veterans whose loans had been assumed?

Mr. OSENDORF. I do not have that information. I am not even sure whether I could identify that or not.

Mr. HARRIS. If you could, you could get that to the committee for the record?

Mr. OSENDORF. I certainly could.

(Subsequently, the Department of Veterans Affairs submitted the following information:)

Statistics relating to the dollar value of collections and offsets from veterans whose loans had been assumed cannot be provided from VA records.

Mr. HARRIS. How much was from IRS tax refunds?

Mr. OSENDORF. That has differed over the years. We have been in the program since calendar year 1986. This past calendar year, about $7 million came from IRS offsets for loan guaranty debts.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. STAGGERS. Mr. Brewster, would you have any questions?

Mr. BREWSTER. None, Mr. Chairman.

Mr. STAGGERS. I will direct this to Mr. McCann, and you can farm it out if you choose. Mr. Schultz of the Disabled American Veterans states that you may be inequitably treating service-connected veterans as a result of a VA General Counsel-Precedent Opinion 22-90. I assume you all would be aware of that. I guess his point is that since you would be able to offset their compensation checks because of that opinion, he believes that these offsets should be returned.

Do you have any recommendations or comments about 22-90?

Mr. MCCANN. Mr. Chairman, it is my understanding—and I will let one of the other staff speak in more detail—as I understand the way we handle debt offsets against compensation, once we have notified a veteran who is in receipt of compensation payments that we are going to undertake to offset, and if he notifies us that he is filing a request for waiver, at that point we cease or we do not begin the offset process. If he goes through the first stage of a hearing, and a determination is made that we will not offset, we determine we will not waive, then we begin the offset process.

If he subsequently prevails in subsequent stages of the waiver process, we not only stop offsetting his debt, but we return whatever monies that we have offset to him. So in that sense, he is made whole relative to any offset that was made, if there is a subsequent waiver.

Let me ask one of the others.

Mr. OSENDORF. That is correct.

Mr. STAGGERS. You were going to ask someone else?

Mr. MCCANN. My only point is that I think that, so far as I know, we are reasonably comfortable with that approach.

The difference with the private sector is it requires a substantial legal process in order to offset salary, and there is simply a time factor. We are given the authority, in the Debt Collection Act, and in a sense, the requirement, that we begin offsets against this particular program as quickly as possible, and there is some indication that we are under some Congressional intent to push as hard as we can in that regard.

Mr. STAGGERS. Mr. Smith, did you have any questions?

Mr. SMITH. Thank you, Mr. Chairman. The Minority appreciates the opportunity for staff to ask a question or two, since our members are not able to be here today.

I think this question would probably be best answered by Mr. Thompson. Have there been court cases where debts in loan guaranty cases have been determined to be invalid?

Mr. THOMPSON. Mr. Smith, I think on that one I would defer to Mr. Kane, who is with us today.

Mr. KANE. We have had a series of cases in litigation. In Washington State, for instance, certain debts were held to be invalid because of the method of foreclosure used by the loan holder. The same is true in Alaska, since Alaska and Washington foreclosure

law is very similar. Both class actions were before the same Judge, I might add.

On the other hand, in Oregon, California, and Arizona, we won. Litigation is pending in 4 other States.

Mr. SMITH. Have any monies that were collected from these veterans been returned?

Mr. KANE. We are in the process now of working with opposing counsel, who is sitting next to me, and the court, to make required refunds. Notices have been mailed to veterans with Washington State loans. The Alaska refund plan will be filed shortly. So that is an ongoing process, and I think it is working very well; but the money has not actually been refunded, as of today.

Mr. SMITH. Has the IRS been notified that this has occurred?

Mr. KANE. IRS is aware of it. We have had informal discussions with them, yes.

Mr. SMITH. In waiver situations, does VA notify the veteran benefitting from a waiver that he or she may need to amend a previously-filed tax return?

Mr. KANE. I would defer to Mr. Osendorf on that one.

Mr. OSENDORF. Our letter specifies to the debtor that he may be required to report this waiver as income. It does not specify he may have to go back and adjust.

Mr. SMITH. Thank you.

Mr. STAGGERS. Mr. Harris has further questions.

Mr. HARRIS. Mr. McCann, on the question of overpayment, is there any consideration given to the veteran's station in life as far as demanding payment back?

The reason I ask this, I had a guy in my district that I went out to visit. The man was dying from cancer and had two things that would kill you, and will get him; it is just a matter of time. Over a period of time, he had evidently been overpaid, and of course he just, he took whatever you all sent him. Then the first thing that he knew, you started cutting his check, and cut it to the point where the man could not even afford to buy his medicine. Matter of fact, I contributed money out of my own pocket to him. When our office contacted the VA, of course, if I remember correctly, I think immediately some help was given to him.

My question is, you know, is there anything that your department does as far as looking into the station of life? I mean, here was a guy that, in effect, you all just cut him out. He could not even afford to buy his medicine.

Mr. MCCANN. I think, Mr. Chairman, we try very hard. Obviously, in some sense, the veteran in one way or the other has to let us know he has a problem. I think we try, I think also in the nature of the standard we try.

Let me let Dan give you a more technical answer to your question.

Mr. OSENDORF. Mr. Chairman, prior to December 1989, the cases you are discussing were handled by our 58 regional offices. Offset was established, the individual was identified, or told that he could come in and request a lesser withholding and furnish financial information. Fifty-eight regional offices had guidelines to operate by. Some operated probably more strictly than others.

That whole process has been centralized in our centralized Accounts Receivable Division in St. Paul, MN as of December 1989, so now it is all under one umbrella.

Hopefully, we will eliminate the wide discrepancy between offices and have more of a standard policy. The standard procedure is the individual gets a letter telling him offset will occur on a specific date, normally allowing him two full checks. He has the opportunity to come in, either request that offset not be done or be reduced, and furnish financial information. We try to look at all aspects.

Mr. HARRIS. Come in to where?

Mr. OSENDORF. He can go to a regional office or he can write or call toll-free to our centralized Accounts Receivable Division.

Mr. HARRIS. Well, I know this one particular individual lived about 30 miles out in the country, and I doubt very seriously if he would have the ability or the financial ability to go anywhere. I know he could not afford to buy his medicine at the time I saw him.

You know, I guess we get to see the people out in the farmlands and the rural areas, maybe that you do not see here in D.C. The human side of it has got to play a part in it, and there should be some consideration of the person's station in life, than just to cut their check, as you cut his.

Mr. MCCANN. Again, Mr. Chairman, I think we have tried, with our 800 number, we have tried in any number of ways to see to it that we get information, as much information as we can from the veteran, and the equity and good conscience standard itself I think would allow us to make certain considerations, but we have to know it. Part of our problem is that many veterans are in relatively isolated areas. No matter how you cut it, we are a big bureaucracy; but I think we try as much as we can to reach out and provide as much information as we can and try and, when we get information of the kind you have indicated, try and seek an equitable resolution.

Mr. HARRIS. The Department was very helpful when we contacted you, and even I think he got aid and attendance in addition to what he had been getting.

Thank you, Mr. Chairman.

Mr. STAGGERS. Would the gentleman yield?

Mr. HARRIS. Yes, I would be happy to yield to the Chairman.

Mr. STAGGERS. Let me understand your position. Mr. Harris asked if you take the veteran's station in life in consideration, and I guess the answer is that you do if the veteran tells you about his station in life. However, there is no procedure for you to outreach to a veteran that might be in the lower stations in life, that does not have the means, does not have the ability to inform you. I assume that is what you are saying.

Mr. MCCANN. I think that is a fair statement. Obviously, you know the staffing issues and other kinds of concerns that we have. I think we have to depend on the veteran, and of course the veterans' organizations that can be very helpful to us in that regard, also. They, the service officers and so on, know our system a little bit better and can help us, and we depend on them a very great deal for that kind of service. But I think in the end, as a practical

matter, the veteran has to tell us that he has a concern or a problem, or a special case. We do not have the capacity, at this point, to go out and look at every individual waiver request in an investigatory sense.

Mr. STAGGERS. Would the gentleman continue to yield?

Mr. HARRIS. Yes, sir.

Mr. STAGGERS. Let me ask this question. What would it take; is there a means, without a large expenditure—what would it take for those people like Mr. Harris described, without us in Washington just sitting back and saying well, gee, we are sorry, but you did not tell us anything?

Can we educate these veterans in a better way?

Mr. MCCANN. I think there is always room for more education. I think it is always appropriate for us to review the kinds of information we send to them in our letters and so on. I think we probably should do that; but I think it has got to be on what I would call an indirect basis; letters and those sorts of things.

Going out to see individual veterans even, for example, in those cases in which we have incompetent veterans that we are managing the estates for, those are very time consuming. I think that is a very staff-intensive kind of activity.

Mr. STAGGERS. Mr. Brewster, do you have any?

Mr. BREWSTER. I have a similar veteran situation to Mr. Harris. I know many of those people maybe had enough schooling or whatever to go fight our wars; they do not know how to interact with Government. I know when you are out campaigning you meet all those folks much more than you do any other time.

Mr. MCCANN. Yes.

Mr. BREWSTER. So, we have met several of them and in some very rural areas. For us to have the capability to go through you to get them some prompt response I think is very important. Any information that you can put in everything you send them, simplifying it as much as possible, is certainly helpful.

You tell some veteran in Southeastern Oklahoma to contact somebody in St. Paul, MN, and that is like telling them to contact Mars.

Mr. MCCANN. Yes.

Mr. BREWSTER. So, I think anything we can do to simplify the systems is very important.

Mr. MCCANN. I agree.

Mr. STAGGERS. Along those same lines, I have two further questions. There seems to me that some of the testimony will say that the lack of timely action by the DVA sometimes results in an overpayment. I think about when Mr. Harris talked about his example about the guy who takes whatever you give him.

Is there some way where these debts which are caused by the administration, where it could be waived, you know, if it is not done in a timely manner? It would seem to be that not only would we be helping the veteran; but going back and then the time and the money which would be spent trying to get the money back, in some of these cases would not seem to be worth it.

So, if there is a problem—if a red flag comes up and there is a gentleman in rural Alabama that you cannot get all the information from, it would seem to me that that should cause some red

flags. Either the man is trying to avoid you or he is not going to have the means to do that. If it is not that he is trying to avoid you, it is just that you do not have the staff, as you have mentioned and all the other problems that the overpayments were caused and this gentleman living check-to-check.

Is there any way or do you have an opinion about that type of idea?

Mr. McCANN. Admittedly, this may sound utopian, but my approach is to prevent the debt rather than to have to cope with it. Both—obviously, there is a great deal going on the in VA that addresses itself to as much of our ADP activities relate to this. We have shortened, by several days, the time span between when we finalize the tape for Treasury and when Treasury actually begins to issue the checks, which gives us one or two more days to make corrections in that month's payments to the veteran.

Just as a technical matter, if we could disperse our own checks, we probably could cut that down by another week or so, but that is not normally the way things are done in the Federal Government.

We are trying, in those ways, to reduce the error rates that we make, so that the problems that Mr. Harris and Mr. Brewster have come upon and that I am sure all members come upon are reduced to an absolute minimum. I think, in terms of—since we are all living in a world with limited resources, to try to focus on that side of it, I understand very much and I know the Secretary does, the feeling, even when we simply—even a veteran who, in a sense, has a reasonably sufficient amount of resource—when you go to them and, in effect, infer, as almost anything we send out does, that somehow they are at fault for the fact that we overpaid them.

I think that is a problem and I think, for all of us, we are better served to prevent the debt or prevent the error rather than try and go recollect it offsets or some other method.

Mr. STAGGERS. In the meantime, and I appreciate what you are saying, and obviously that is a goal and we want to work with you. In the meantime, would you consider or do you have an opinion about how much it would cost? Because, as you said, there are limited resources.

I am exploring this somewhat off the top of my head; but, especially in those type of cases where, for example, there is a change in dependency, where you cannot act upon the information. It is not the veteran's fault, it was just the timeliness of the action from the administration of waiving those type of cases. I realize that if it is too much of a cost, we are going to have to do something.

I agree with the path you have chosen. You want to eliminate it before you get to that position. In the meantime, those veterans who are out there, who are suffering, who are going without the medicine because they do not have a Claude Harris that they can go to—I would like to have a statement, if you want further time to think about it then that is fine also.

Mr. McCANN. I would like, Mr. Chairman, if I could, to supply that for the record.

As you know, the general policy within the Federal Government is a very stringent debt collection policy. I think we have got to, as a department and certainly in seeking guidance from the Congress

and specific direction in the case of legislation, be sensitive to the fact that we are carving out, in a sense, a different policy here.

Let me, if I can, provide it for the record.

(Subsequently, the Department of Veterans Affairs submitted the following information:)

I would like to provide an additional statement in response to your questions concerning waiver of debts created because VA could not act timely on information provided by the veteran and debt collection from disadvantaged veterans.

Our goal is to prevent debts resulting from VA's lack of timely action rather than cope with their collection. However, debts of this nature will continue to occur until we implement the policy that I have outlined. Although VA's lack of timely action may have contributed to the creation of a debt, it is still an overpayment that must be repaid in accordance with the very strict federal debt collection policy. We do not believe that an automatic waiver of such debts is an appropriate solution to this problem. It is true that many of these debts occur in the types of situations described by Mr. Harris and Mr. Brewster, yet many do not and involve veterans who are well aware that they are being overpaid. Consequently, we believe that each debt, regardless of VA's degree of culpability, must be considered separately for waiver. Our new waiver standards do require us to take into consideration and balance the contributing roles of both VA and the veteran in the creation of the debt. These standards also require us to take into consideration the veteran's age, health, and educational background when reviewing the veterans' role.

I understand your concern when VA pursues debt collection from those veterans who can least afford to pay us. However, I can assure you that we do not single out these veterans for debt collection. We pursue collection of all benefit and loan program debts. I would add that many of our debts, especially the overpayment of educational benefits, involve veterans who understand the reason for their debts and are probably capable of repaying some, if not all, of them. In applying our waiver standards in those cases involving a disadvantaged veteran, we take into consideration not only any VA fault but also whether the collection of the debt will create a financial hardship or defeat the purpose of the intended benefit.

Mr. STAGGERS. Yes. We want to work with you and I think that we all agree that there is something that can be done. I know that the position you are in is that you cannot waste the resources because of the restrictions the Congress. But we are the ones that can make some of those changes; so we will look to you for some direction on this.

One other question. I would like to know about what you are doing about the old-debts and have you gone back and reviewed them? Have you notified those veterans of the new waiver criteria? I assume that you have.

Mr. OSENDORF. We have not gone back on each and every record sending a specific letter out to these people, because the address information on a lot of these accounts is old. We would have to go to IRS in a special effort to do this.

Mr. STAGGERS. Okay. I want to thank the panel. I don't think there are other questions by any members.

I want to thank the panel. There may be additional questions, for the record, from some of the other members. We would appreciate it if you could respond to those. We thank the panel.

The next panel will be representatives from the Disabled American Veterans, Mr. Schultz; from the Paralyzed Veterans of America, Mr. Bollinger; Vietnam Veterans, Mr. Egan; and VFW, Mr. Cullinan.

STATEMENTS OF RICK SCHULTZ, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; JOHN BOLLINGER, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; PAUL S. EGAN, LEGISLATIVE DIRECTOR, VIETNAM VETERANS OF AMERICA; AND DENNIS CULLINAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

STATEMENT OF RICK SCHULTZ

Mr. SCHULTZ. Thank you, Mr. Chairman. DAV is pleased to have this opportunity to present our views on VA's implementation of the new waiver provisions contained in Public Law 101–237, and draft legislation affecting attorney fees in connection with VA loan guarantee indebtedness cases.

Initially, Mr. Chairman, I would like to take this opportunity to express DAV's deep appreciation of this subcommittee's efforts, as well as your personal commitment to ensuring that VA consider equity in good conscience when determining waivers of VA overpayments. Clearly the waiver provision of Public Law 101–237 has had a most positive impact on the lives of many veterans seeking waiver of their indebtedness, especially those service-connected disabled veterans.

Mr. Chairman, as mentioned in our prepared statement, DAV National Service Officers report, and VA's own statistics bear out that VA is approving waiver requests consistent with the spirit and intent of the law. The only criticism, Mr. Chairman, is that some Waiver Committee members are interpreting the new waiver standards to be more strict in compensation and pension and education overpayment waiver requests. This, too, we believe, is confirmed by VA's own statistics in this area.

Prior to the implementation of the new waiver standards, compensation and pension overpayments were waived at a rate 4 percent greater than those of loan guarantee, and now the reverse is true. For the first quarter of fiscal year 1991, statistics reveal that loan guarantee waivers are granted at a rate 4 percent higher than compensation and pension overpayment requests.

Mr. Chairman, on the subject of your draft bill to modify the current attorney fee restrictions in the loan guarantee debt waiver cases, I wish to just make a few brief comments.

As you know, currently, attorneys may not charge a fee for service rendered prior to the date on which the Board of Veterans Appeals first makes a final decision. This restriction was placed into law primarily to preserve the long-standing non-adversarial nature of VA's adjudication process.

DAV recognizes that, in some cases, especially those in loan guarantee, are more complex in areas dealing with different State laws. For that reason, Mr. Chairman, we do not oppose your legislation, in fact, we only have one modification we would like to see, and that is a mechanism in place to look at the fees attorneys charge.

Mr. Chairman, I would like to make a couple of other comments regarding the previous testimony. I know that Mr. McCann stated that some of the problems that they have in the waiver cases, in

adjudication especially, is a problem with staff. I pointed that out in my statement.

I would just like to add that we believe that in some cases, especially in compensation and pension cases, overpayments are created basically as a result of the tardy actions taken by VA. In a lot of those cases, it may be cost effective to just go ahead and waive those overpayments, rather than spend the time, personnel, etcetera. They have also indicated that they are spending a lot of staff time on these types of cases, and we would hope that the VA would take a good, hard look at that issue too.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Schultz appears at p. 36.]

Mr. STAGGERS. Thank you, Mr. Schultz. Mr. Bollinger.

STATEMENT OF JOHN BOLLINGER

Mr. BOLLINGER. Thank you very much, Mr. Chairman. On behalf of Paralyzed Veterans of America, thank you for inviting us to testify today.

Before I comment on the waiver provision in your draft legislation regarding the extension of attorney's fees, I just want to tell you again how important a strong, viable VA home loan guaranty program is to the members of my organization.

When you take a downturn in the national housing market or in a regional housing market, and you couple that with a limited number of homes that are accessible to people in wheelchairs, it really becomes critical that VA is able to provide veterans a strong home loan program. That means adequate loan servicing and sufficient staffing. It is critical to our people, and we thank you for your concern. We encourage you to do everything you can to give VA the proper number of employees and other tools that are necessary to run a good program.

Regarding the standards of waiver consideration, we are, as you said earlier, about a year down the road from the original implementation of those rules. Although we have had few complaints from our members, we are concerned about the number of people who are on the compensation roles who are vulnerable to debt collection. These individuals are easy targets. We do monitor the situation closely, and we will continue to do so.

We encourage the Committees on Waiver and Compromise to resolve any reasonable doubt in the debtor's favor when considering elements such as fault, unjust enrichment and undue financial hardship, in the case of loan guaranteed debts.

Mr. Staggers, we totally support your bill to allow claimants seeking waivers arising out of home loan guaranty debts to employ and pay reasonable fees to attorneys at any stage of the proceeding. We believe that in these cases in which VA is the plaintiff seeking to recover an alleged debt from a veteran, the veteran should have the right to obtain legal representation in what, for many individuals, is certainly the largest financial investment of his or her life.

We believe there is a clear distinction between situations where a veteran makes a claim for benefits and a situation where VA initiates an administrative action to recover a debt. As has been

pointed out earlier, from 1974 to 1986, VA made the same distinction by exempting debt collection and benefits forfeiture proceedings from the attorney fee restrictions.

We offer our strong support with you on that bill and we will do everything we can to help ensure that it is ultimately passed.

That concludes my remarks. Thank you very much.

[The prepared statement of Mr. Bollinger appears on p. 39.]

Mr. STAGGERS. Thank you. Mr. Egan.

STATEMENT OF PAUL S. EGAN

Mr. EGAN. Thank you, Mr. Chairman. As you can see, our testimony for this morning's hearing is uncharacteristically short. Apart from the technical/legal aspects of this issue, ours is a principled position. The $10 attorney fee limitation is, after all, as we all know, a vestige of a post-Civil War era law.

That law, as we also know, was designed to protect veterans from unscrupulous attorneys; but the effect of keeping this law on the books and the effect of the VA's enforcement of this law is now having the effect of subjecting veterans to exploitation by an unscrupulous agency, which is, in our view, inappropriate.

We are certainly very pleased to hear this morning the VA witnesses acknowledge support for the draft legislation that you have put forward. Hopefully that support does not suggest that there is perhaps too much "wiggle room" in the legislation.

In any event, we believe, again, based on principle, that the legislation should not be limited to the home loan program alone. After all, an alleged overpayment is an alleged overpayment or an alleged indebtedness is an alleged indebtedness, whether it takes on the dramatic characteristics of amounts involved with the Home Loan program, or lesser amounts from perhaps a couple of checks too many, or an overpayment, created by the VA's inability to stop payments as appropriate, in time to prevent an overpayment.

I think it is also necessary to point out that we are very much supportive of a legislative remedy to this issue. We can't rely on the Agency to correct this problem administratively. Between 1976 and 1986, the VA didn't impose this $10 fee limitation in administrative debt collections, and they made a U-turn on that policy in 1986. Unless we put in place a statutory bar to the imposition of this post-Civil War vestige, anything positive the Agency does administratively today can be reversed 2–3 years down the road.

I suppose if this legislation has to be limited, then it seems appropriate to offer sort of—tongue-in-cheek—an additional proposal here. That would be, on any administrative debt collection action that the VA imposes that's outside of what's covered by the legislation, perhaps the VA itself ought to be limited to $10 in the amount that it can spend to prosecute the action.

I say that with tongue-in-cheek, just to dramatize the differentiation between the relative positions of the veteran and the Agency. I mean, the Agency basically is going after a flea with a shotgun, and that's not equitable. I suppose, in concluding, Mr. Chairman, I would say that we're certainly supportive of your efforts.

Yet another year has passed and under the restrictions of this law, veterans continue to be treated as second class citizens and

continue to be subject to potential siezure of property without due process of law. It certainly is about time that this was corrected.

[The prepared statement of Mr. Egan appears on p. 44.]

Mr. STAGGERS. I agree. Thank you. Mr. Cullinan.

STATEMENT OF DENNIS CULLINAN

Mr. CULLINAN. Thank you, Mr. Chairman. On behalf of the entire membership of the Veterans of Foreign Wars, I wish to sincerely thank you for including us in today's hearings which will address the operation of the VA Home Loan Program. The VFW remains firmly committed to working for the improvement of the VA Home Loan Program and the services it provides this nation's deserving veterans.

With respect to the new criteria regarding the VA Home Loan Waivers of Indebtedness, the VFW has been and continues to be a strong supporter of liberalized rules for determining when a veteran whose home has gone into foreclosure would be required to make restitution to VA. It is our belief that a veteran would not intentionally default on a loan, and that when this does occur, it is only the result of unexpected economic hardship of the highest order.

Thus, the new criteria which require that all possible consideration be giving to granting a veteran a Waiver of Indebtedness in the event that his or her loan goes into default for reasons beyond his or her control, are both proper and appropriately compassionate. Mr. Chairman, we support the draft proposal which you have asked us to comment upon, which would amend Title 38 so that veterans seeking Waivers of Indebtedness arising out of the VA Home Loan Guarantee Program, would be allowed to employ attorneys to represent them at any stage of the proceeding.

Although all debt collection actions may be emotionally as well as financially overwhelming, those which involve the VA Home Loan Program are especially problematic. Along with having to be completely familiar with complicated and highly technical federal statutes covering a VA foreclosure, an individual must also be thoroughly acquainted with the involved matters of State law which are relevant to the procedures employed when forfeiture occurs on a property under a VA guaranteed loan is sold at a loss, in order to realize a fair and equitable determination.

There should be little disagreement that there are few veteran borrowers, especially among those that are subjected to VA debt collection action, who are so equipped. With respect to pursuing a veteran who is allegedly in debt, VA is committed to taking aggressive action. This means that, along with assailing veterans with threatening computer-generated letters, they are subjected to an arsenal of sanctions such as garnishment of wages, reporting the debt to credit reporting agencies, referral to the IRS, referral to private collection agencies, and offsetting VA disability compensation for service-connected disabled veterans, at time even causing the Department of Justice to institute judicial proceedings against the veteran.

Against this federal juggernaut, as the law is currently written, the veteran must essentially go it alone until the Board of Veter-

ans Appeals' decision is rendered. Clearly, this is neither fair nor equitable, nor is there any danger that allowing lawyers into the system will make the proceeding any more adversarial than it is at present.

Having said this, it would only seem fair and logical that veterans be allowed to retain an attorney in such matters at any stage in the process, rather than only after a ruling has been made by BVA. Allowing attorney involvement at an early stage allows for increased familiarity with the case, an accumulation of pertinent facts and details which would permit for a better and fairer defense when a veteran is allegedly in debt to VA.

Mr. Chairman, once again, I thank you for asking us to participate today. That concludes my statement.

[The prepared statement of Mr. Cullinan appears on p. 46.]

Mr. STAGGERS. Thank you. I've got a few questions and then I'll let other members proceed. Mr. Schultz, on the attorney fees, you state that you believe that a fee approval and review mechanism must be in place. I'm already sensitive because I used to be an attorney before coming here.

Not all attorneys are out to soak everybody. I would be real interested in what recommendations you may have on how we could do that? What mechanisms would you foresee that we would have in place? I can remember when I used to practice, there used to be a listing of charges if you did a will, etc. Would it be a regional type of thing, or would there be a flexibility, or would there be another administrative review or how would you envision some sort of mechanism to review those fees?

Mr. SCHULTZ. Well, certainly, there should be some flexibility, and as far as different regions, as you mentioned, fees could be charged differently. We mention this just because there's nothing in there to say, what a reasonable fee is. Maybe there should be some mechanism put in place, some review process within the Agency or within the local community. I don't know how they would do that, but just to determine to make sure that fees being charged are, in fact, reasonable.

Mr. STAGGERS. I'll try to work on that. If anyone has any recommendations about that, I would be glad to listen to them. You also talked about Opinion 2290, which I asked the Administration about that. How would you recommend remedying some of the problems that we've been experiencing or that at least you see the inequitable treatment with the service-connected veterans as a result of that opinion? How would you see remedying that problem?

Mr. SCHULTZ. Mr. Chairman, I don't know that we can remedy the problem. I pointed out the difference that service-connected disabled veterans, for the most part, are the only ones affected by this because they're the ones that had their benefits offset; not that other individuals haven't, but as a class, they have been adversely impacted upon.

I merely point this out to show the need for this legislation to liberalize the standards which were too strict. The other reason is simply to show the frustration that a lot of service-connected veterans feel, believing that they're being treated unfairly. I don't know that there is a way that this can be worked out.

I certainly don't believe that any of the monies that they would have to reimburse, would unjustly enrich these individuals, either.

Mr. STAGGERS. Mr. Bollinger, in previous hearings, you've talked about some of the problems with divorced veterans, and are you still experiencing problems with the equity and good conscience standards with divorced veterans?

Mr. BOLLINGER. We're still concerned about it. We have not had a large number of cases reported by our National Service officers. Certainly every case is unique when a request for waiver comes in. We would strongly encourage VA to apply the Equity and Good Conscience Standards in the same manner for a veteran who has a debt due to an ex-spouse who, for one reason or another, is unable to make mortgage payments. We would like that standard applied the same way it is applied to, let's say, a serviceman who is transferred or moved.

Mr. STAGGERS. If you have any cases, if you could share it with the committee, I'd appreciate that.

Mr. BOLLINGER. I'd be glad to.

Mr. STAGGERS. Mr. Egan, you mentioned about the fees and that you would like to see it broader than what my bill will do. Unfortunately, I have limited jurisdiction. Obviously, I'd do a lot more if I had broader jurisdiction, but I do have just the one Subcommittee that I can control.

Can you give me some examples of other collection actions where this could be used without too much hardship on the veterans?

Mr. EGAN. Other collection examples; well, obviously, there's the Home Loan problem. There's the problem, as the VA indicated, where someone who is not, on a continuing basis, eligible for payment checks, perhaps in pension, perhaps DIC, perhaps compensation in the case of someone whose percentage level was reduced, perhaps an education overpayment under Voc Rehab or even under the new Montgomery GI Bill.

Those are additional examples where perhaps the amount wouldn't be as great as those that have become legendary with the Home Loan Program, but the principle at stake here is still the same. It's an indebtedness and the veteran is not permitted the opportunity to make up his mind whether he needs a lawyer or whether he ought to pursue some defense; either to seek a waiver or to dispute the existence of the debt.

I'm not sure if I'm answering your question.

Mr. STAGGERS. You are. I would ask another question to follow up. Would you agree with Mr. Shultz that if we had some sort of mechanism for fee review that there wouldn't be that much of a burden upon the veteran?

Mr. EGAN. I'm glad I'm getting a chance to respond to that, because if you set up some sort of a schedule of fees that are determined to be reasonable, there are some instances—and again, the Home Loan Program is a classic example where we're dealing with potentially, and in fact, very complicated State real estate laws that vary from State to State. I don't think the Federal Government is necessarily in the best position to determine what an appropriate fee for an attorney in Washington State or Idaho or Connecticut or New York might be, given the fact that the laws in each of those States might be sufficiently different and there might

be a significant variation in complexity and the amount of work that it would take to represent the veteran.

It's not really clear. With some of the lesser overpayments resulting from perhaps somebody getting a check or two too many, it might be different. But to set a standard schedule of fees that were determined by somebody in Washington to be reasonable, doesn't strike me as lending sufficient flexibility to allow attorneys to do their work.

Mr. STAGGERS. Especially if it takes another hundred years to revise the schedule.

Mr. EGAN. Certainly.

Mr. STAGGERS. It may be like obscenity; if you see it, you know what it is.

Mr. EGAN. There's something that's underlying all of this, and it's a general posture on the part of the VA that's been troubling for a long-time. I think to a large extent, the veteran service groups too have adopted this posture, and it's a paternalistic posture. It assumes that the agency or we, the veterans groups, know better than the veteran what's best for the veteran.

Certainly, nobody is interested in seeing the veteran exploited, but certainly we ought to recognize that veterans are responsible citizens and that they ought to be permitted an opportunity to make decisions for themselves; whether it's to engage an attorney or to determine for himself or herself, what a reasonable fee ought to be.

Mr. STAGGERS. Thank you. Mr. Harris.

Mr. HARRIS. I just wanted to associate myself with the gentleman's remarks he made. Hopefully the unscrupulous lawyers that led to the passing of the $10 fee are gone now. Certainly the ones in the Civil War time, I guess, are not around. I think you have got to let market conditions control on that. Otherwise, we are short of FTEE's as it is and we are going to create another bureaucracy in the Department on lawyer fees.

Thank you.

Mr. STAGGERS. Mr. Brewster.

Mr. BREWSTER. Yes. I appreciate your remarks about the unscrupulous lawyers. I am a pharmacist, I am not a lawyer. At any rate, I think you will find that most State bar associations are working pretty hard to have some reasonable fee structures. What might be a reasonable fee in Oklahoma certainly might be an underpayment in New York or Pennsylvania.

I would think that we should be able to utilize the bar association, their review process, to come with reasonable fees in different States and also have a review process, if someone wants to make the case that it is not a reasonable fee, that it is an underpayment.

I would hope that we could utilize State bar associations in those particular mechanisms. They are trying to upgrade their image as well.

Mr. STAGGERS. Mr. Smith.

Mr. SMITH. No questions, Mr. Chairman.

Mr. STAGGERS. I want to thank the panel. You gave good testimony. I look forward to working with you.

The next panel is the smallest panel, but that does not mean that they are less effective. It would be Mr. Leen and Mr. Deming, if they will take their seats. We will start with Mr. Leen.

STATEMENTS OF DAVID LEEN, ATTORNEY, LEEN AND MOORE; BRUCE DEMING, ATTORNEY, VAN NESS, FELDMAN AND CURTIS

STATEMENT OF DAVID LEEN

Mr. LEEN. Thank you. I want to thank the committee for inviting me to testify. It is always an honor to have an opportunity to communicate with the law makers, as I do most of my work in the judicial branch of the Government.

What I would like to do, is to simplify my remarks somewhat and try to answer some of the questions that have been asked.

I think that the biggest problem with the VA debt collection structure right now is that there are a number—a large number of individuals out there who today are losing their disability checks and their pension benefits, who do not know that the law has changed. They do not know that a waiver of their debt is probable, an they do not have the ability to figure out how to get a waiver.

The first group of these people are those that have just never received any notice. The withholding began in 1985 and they are losing $200 a month from their disability. That will go on forever, unless something happens that makes a light go on in their head that gives them this knowledge.

The law has been—almost 2 years old and Congress issued a mandate to the Veterans' Administration that said that debt shall be waived. The language was changed from "may" to "shall".

I believe, in my humble opinion, that that requires the Veterans' Administration to take the affirmative and waive the debt, which means they need to go out and find these people that live 30 miles from the nearest telephone and tell them that, we have the ability to waive debt now that we did not have a few years ago. Do you meet this criteria?

That, of course, is a difficult outreach problem; but my proposal, and it may be a radical one, is to essentially have a moratorium on the debt collection and then start with the idea that we will go out and collect from those people that really do owe the money—those people that are guilty of bad faith, fraud, equity skimming—those people that do not come under the waiver guidelines.

I think if we do that, we are going to reach all of these people that are in the absolute most disadvantaged position, in terms of getting a waiver with due process of law. I do not think it is going to impact the financial resources of the Government because before 1989 they were collecting only 1 or 2 percent, as the previous testimony of the VA indicated. The amount of waivers granted is over 68 percent right now.

So, basically, most of the debt is, and ought to be waived. I think we all agree with that. The question is: Do we keep collecting the disability checks from these guys that live 30 miles from the nearest telephone until they can figure out a way to come to us, or shall we stop and start the process over? I think that is the fairest way.

I think that—I can briefly comment on the litigation I am involved in. I know there was a question about that. I have been involved in eight cases that are statewide class actions, and in five of those cases, the courts have determined that the entire indebtedness is invalid. That is about $350 million worth of existing deficiency debt in the states of Washington, Alaska, Idaho, Minnesota and Wisconsin.

One of those cases is on appeal, and that is in Minnesota. The rest of them are existing rulings. There have been three other states, Oregon, California and Arizona, where the courts have gone the other way. Those cases are also on appeal, so the issue has not been resolved, and I am really not interested in urging the committee to be too concerned with that.

My point is that there are—the courts could intervene and declare the debt invalid in situations where the debt has not been waived as of December of 1989 and make the VA pay it all back. The court system is the worse place to resolve these disputes, and the legislative branch is the best place to resolve these. So, I urge that the debt collection moratorium be imposed.

I see that my time is up, so I will let Mr. Deming comment on the attorney fee issue, which is his area of expertise and then I will be happy to answer any questions.

Thank you.

[The prepared statement of Mr. Leen appears on p. 48.]

Mr. STAGGERS. Mr. Deming.

STATEMENT OF BRUCE DEMING

Mr. DEMING. Thank you, Mr. Chairman. Good morning. It is an honor to be asked back here today to testify with respect to the attorneys fee issue.

I find that much of my thunder has been stolen this morning by the eloquence of the individuals who have testified before me. I would simply like to echo the sentiments expressed previously with respect to the fundamental distinction between the situation where the veteran applies for a benefit—files a claim with the VA, and the situation where a debt collection proceeding is initiated against a veteran by the Department of Veterans Affairs.

In the claims proceeding, of course, the VA is compelled by its own regulations to give the veteran the benefit of the doubt. In many cases, the agency assists the veteran in the preparation and the prosecution of the claim. Debt collection proceedings, of course, are inherently, unavoidably, adversarial in nature; all debt collection proceedings.

There is a difference between debt collection at the DVA and debt collection anywhere else. In the debt collection proceeding the roles are sharply defined; the VA is the prosecutor and the veteran is the defendant. By its own regulations, the DVA is committed to take "aggressive action, with effective follow-up to collect all money or property arising from its activities."

Make no mistake about it, Mr. Chairman, if you are a veteran and you are targeted with owing money to the Federal Government, you are in for some very rough sledding. You are facing serious long-term financial and legal jeopardy.

As the witnesses before me have testified, the powerful sanctions that are wielded by the DVA against veterans are significant. We are talking about garnishment of wages—if the veteran is a Federal employee—referral to private collection agencies for harassment of the veteran; offset of existing benefits, including disability benefits, to which the veteran may be clinging—as referred to by Mr. Harris earlier—referral to the IRS; referral to the Justice Department for prosecution.

In short, Mr. Chairman, these individuals face very serious legal jeopardy. Under the VA's current interpretation of the attorney's fee law, they must do it alone, without the benefit of counsel, without any ability to learn and understand their rights and responsibilities under the law.

Now, I have just emerged from 4 years of hard-fought litigation with the VA and I regret to inform the committee that the situation has not been remedied.

In November of 1989 the U.S. District Court for the Eastern District of Virginia issued its decision in the Bahn-Miller Case. We lost that case. The District Court, adhering to the established principles of agency deference, upheld the VA's interpretation of the fee statutes as applied to debt cases.

We appealed it up to the 4th Circuit, and while that case was on appeal, the VA General Counsel's Office came out with yet another precedent opinion, purporting to clarify its position, once again, on the fee statutes.

Instead of clarifying the situation, Mr. Chairman, I submit that this precedent opinion 19–89, in fact, made it more confusing than ever. The specific nuances and points of confusion are set out in my written testimony, and I will not go into them here.

The bottom line is that now the situation is so confusing, with respect to the VA's position, that you need a lawyer to tell you whether or not you can hire a lawyer.

We have taken our efforts, in the Courts, as far as it can go, and it is now time for Congress to step in and remedy this situation once and for all. Until veterans and the members of the Bar throughout the United States are told clearly and in a straight-forward manner, through legislation, where and when they can be represented and represent veterans in these cases, lawyers will still not take these cases and veterans will continue to go unrepresented.

Mr. Chairman, this is not a case of a benefit, a hand-out, a subsidy, or a favor. This is a case of fundamental fairness. American veterans deserve the same rights that all of us take for granted everyday; the right guaranteed to us under the Constitution—the right to be represented by an attorney when facing the tremendous resource and power of the Federal Government. Veterans are continuing to be denied that right.

We want to express our deep appreciation to you and to your colleagues for expressing interest in this. We appreciate your introduction last Congress of H.R. 5169, and we are delighted to see continuing interest this session. We note that the Senate has already introduced similar legislation this session, Mr. Chairman, and we are delighted to see this Committee moving forward.

It is time to fix this once and for all as well.

In closing, I would just like to make two points with respect to some issues raised here today. First, Mr. Chairman, you asked earlier about the language of the current draft. I would note that the language of the current draft differs a little bit from the excellent language that was set forth in H.R. 5169 last time around.

The current language refers to cases "arising out of the Home Loan proceedings," or something like that. I would suggest that the committee seriously consider using some of the language from the previous bill referring specifically to proceedings to collect an indebtedness.

In my own experience, the VA has a history of imparting some rather strange constructions to statutory language. Our entire law suit, in fact, challenging the VA's application of the attorneys' fee restrictions to debt cases focused on the VA's construction of the word "claim."

They construed the term "claim for benefits" to mean claims by the VA against veterans. So, instead of referring to "cases," I suggest we clearly carve out what it is that this proposed legislation refers to and avoid any future discrepancies over it.

Secondly, with respect to the issue of reasonableness. I associate myself with the remarks Mr. Harris made earlier. I think that the State—and Mr. Brewster—I think that the State bar associations can do an excellent job of reviewing this.

I think also, aside from our desire to be paternalistic with respect to the veterans and to protect them, let's remember the purpose of the original Civil War Era statute. The principal purpose of that statute was to protect veterans from shyster lawyers; but it was also to prevent the diversion of their pensions from the intended beneficiary.

Back in those days, it was a common practice for a lawyer to say, give me 30 percent of your pension and I will get you a nice pension for life. The monies were being diverted. That is what really Congress was speaking to back in those days.

I think it is appropriate, if you are going to do anything at all, simply to insert perhaps the words "reasonable fee" in the statute and leave it at that. I certainly would not want to see any sort of mechanism set up that would involve the VA, because, after all, as a matter or principle, I do not understand why the prosecutor should have a say in what the defendant is paying his lawyer. It seems to me that just does not make any sense and it just is not fair to the veteran.

Thank you very much for the opportunity to come up here again. I would be delighted to answer any questions.

[The prepared statement of Mr. Deming appears on p. 53.]

Mr. STAGGERS. Let me start with the reasonable fees. I think what some of the people were talking about a fee approval and review mechanism to address the problem of lawyers preying on veterans. If we had such language, how would a veteran know, and second, proceed to get a reduced fee? I think that's the problem that some of the people were addressing.

I don't know what the mechanism is, but I understand the problem that people are addressing. Reasonable fees could be addressed from a lawyer's standpoint, but then where would veterans go to complain? Would you envision, then, that the Department would

have the ability to reduce the fees, should they have that ability, and where would the veteran go for some sort of relief if we just left it at reasonable fees?

Mr. DEMING. Well, I suppose, Mr. Chairman, it would be the same as it would be for any sort of legal representation. The American Bar Association and the various State bars, as I understand it now, are becoming increasingly strict as to exactly how the relationship between attorney and client develops and how it should be established.

There are increasing requirements for a written representation agreement between attorney and client to carefully spell out exactly what the fee arrangements are. These requirements are becoming increasingly strict, and it seems to me that a veteran is going to be made fully aware of what the arrangement is at the outset.

As to reduced fees, it seems to me that you always have a fair amount of variety in shopping for a lawyer just like you do shopping for any other type of service or any other type of commodity. They come in all shapes and sizes, they charge all types of fees, and, as I referred to earlier, these cases vary significantly in complexity, as Mr. Leen has made reference to, talking about proceedings in a variety of States with different kinds of laws.

So, I guess my point is, there is only so much you can do to protect the veteran, and I would argue that this type of attorney/client relationship really is no fundamentally different than any other type of relationship in a criminal defense proceeding or in a basic civil matter.

Mr. STAGGERS. If I was sitting on that side of this exchange, I'd be making the same point, and I guess there is the concern to put the initial restrictions on. I do know that when we examined judicial review, we did put language in that the court would be authorized to order a reduction of fee if it finds that the fee is excessive or unreasonable.

I know that the courts in any case could do that for an award. It usually doesn't get into the attorney fees because it is a private contractor, as you point out.

To solve some of the concerns of what you heard earlier from previous testimony, how much is offensive to your idea of free market type of contract that an individual would be entering into with a private attorney? I'm not sure that we can involve the court because these cases may not be getting to the court.

I think what we need to do is contact the American Bar Association for some recommendations, but at this time, how much does that offend you? Would you like some sort of language like, if there was a finding, that the veteran could go to the Department and say, you know, "This seems to be unreasonable?" Of course, there may be some jurisdictional concerns. There are a lot of problems with it.

Mr. DEMING. There are some problems there, Mr. Staggers, and I appreciate where you're coming from on that. We seem to have that mechanism in the affirmative claim situation, and I think the language of the Judicial Review Act of 1988 has some provisions in there.

I wonder if perhaps that same language might even be applicable in debt cases should they be appealed up that far to the Court of

Veterans Appeals. But my feeling is if it isn't broken yet, don't fix it, because when we start getting into VA involvement in oversight of fees, I hesitate to use the word "chilling" effect, but I just don't see the need for it at this time.

If it becomes a problem, it's something to be addressed, but at this point, my main concern is getting the avenues open so that these veterans can get access to legal counsel, and I believe that that will happen if we can get this law turned around.

Mr. STAGGERS. One of the reasons it may be needed has nothing to do with the realities of where you may be operating, but from where I operate, it may be necessary just to get the thing passed.

Mr. DEMING. I understand.

Mr. STAGGERS. That's one of the problems we face, too.

Mr. Leen, do you have any comments about the general discussion we've been having?

Mr. LEEN. Well, I strongly recommend that there be a requirement that whatever fee arrangement there is with the veteran and the lawyer that it be in writing because—and I know a lot of lawyers, and I have—there are plenty of lawyer jokes around to know their reputation, but I think if the fee is in writing, that gives the veteran 100 percent information about exactly what they're getting into, it allows them to make a choice.

If it's not in writing, that's where all of the problems in attorney fee disputes arise across the board, and I think any private lawyer would tell you that.

The legislation could say that a reasonable fee could be charged based upon a written fee agreement that the veteran signs before the matter begins, because that way the veteran—if there is a problem, at least in my State, and I think almost every State bar association has a fee arbitration panel, and if you have a written fee agreement and the lawyer tries to go around it, or maybe it just turns out to be unreasonable, you can go to the bar association and the bar will review it. I think that's the best place. Let the marketplace and the private bar associations deal with those kinds of problems rather than involving the agency that really has a lot of other things to do.

But I think that a written contract would solve 90 percent of the miscommunication about fees between an attorney and a client.

Mr. STAGGERS. Playing devil's advocate, what about a standard type of agreement? I'm thinking about a credit applications. You know how much your payment is going to be because of requirements from the Federal Government. There has been a lot of complaints from lending institutions that there are too many requirements, and there is too much information, so nobody ever reads it.

But I guess from the other standpoint, if I'm a lawyer, and if I'm one of those attorneys that would be overcharging, I could make that in writing and make it a 20-page agreement that nobody would ever understand. So, is there some way we could simplify the language so that we wouldn't get into those type of cases, where you could be overcharging under a written agreement and have the veteran not know he's being overcharged?

Mr. LEEN. Well, I'm somewhat hesitant to recommend this, and Mr. Deming may have different thoughts, but there could be a form required, a one-page contract that—and I guess it would have

to be a VA form, although Mr. Deming, I'm sure, and I would be happy to review it. That would just be a fill-in-the-blanks kind of form, and that "If you want to hire a lawyer, use the VA form number da-da- da-da-da."

That form would say that, "I'm going to charge you a reasonable fee." It is subject to review by the bar association, and this is the hourly rate.

We have in our law firms the same one-page form that we use in every case, and it's on NCR paper, one to the client and one to the lawyer, and I think, if you limited it to that, and it was very specific that the veteran client would get sufficient information to clearly what their involved in.

I think many lawyers have these, and it's always recommended by the bar associations. So that may be sufficient, but I think that a short one-page agreement is really going to solve most of the problems.

Mr. STAGGERS. Do you have any comments about that?

Mr. DEMING. No. I think that's an excellent idea, Mr. Chairman. I'd like to mull these issues over and perhaps submit something to you.

Mr. STAGGERS. I would love that. In fact, if anyone else, the people who have testified, if they want to submit on any of these ideas——

Mr. LEEN. I'm sure the American Bar Association Committee on Veterans Affairs would provide a form that would be very acceptable, be happy to do so.

Mr. STAGGERS. I assume that both of you are familiar with the Department circulars and training manuals on debt waivers. Do you think they give clear direction to the field stations?

Mr. LEEN. My feeling is, and I haven't reviewed the most recent ones, but I see a great variance in the way they're administered. The biggest example that you may be familiar with is the situation where the loan was sold to an assuming purchaser, and then the default existed. There's a case called Whitney, and there's DVB circulars about the Whitney case, saying that, "If you do not receive notice of the foreclosure, they won't come back and get you." Many regional offices refuse to follow it, and they just ignore it.

I'm not being critical of the VA because it's a huge bureaucracy and difficult to make things uniform. From that, I postulate that many of the other standards are different.

I just in the last week have received about 30 letters. For some reason, I'm getting about five letters a day, and I'm thinking about copying the committee on those letters because there are some pretty amazing stories.

This week, the VA sent a letter to Reverend Tom Hale that I reference in written materials, and in that letter, the VA says that if you get a waiver, it constitutes taxable income, and you will have to pay tax on this. It's in his letter, and it's a letter dated 1991.

The VA is not correct. It's my understanding that they do not send the Form 1099s to the IRS, that they did up until a year ago, but they tell the veteran that, "If you get a waiver, it's taxable income." I have rulings from the Internal Revenue Service that say that is not true. It is not their position. But the veteran that gets this letter saying, "If I get a waiver of $30,000 in debt, I'm going to

have to pay $8,000 of tax liability on that because there's no withholding, there's no provision to do that."

If you're destitute, you have just shot yourself in the foot by getting a waiver. You've lost, because then you can't even discharge it in bankruptcy. I think that that scares a number of veterans from even asking for a waiver. I would urge that that language not be sent to veterans.

It may be taxable income. Maybe I'm wrong. But I don't think that the VA should determine that; I don't think I should determine that or Congress should determine that. I think that's the IRS' problem.

If there's a forgiveness of a debt and that's taxable income, let the normal tax laws deal with that. But to scare a veteran like that, and that's a tremendous—I've had dozens of people tell me that they've declined waivers and turned them down just because of the fear of this tax liability, and there are dozens of people that I've talked to that have problems with the IRS in trying to get them to undo that. It is a nightmare. Anyone that's dealt with the IRS would know that that's extremely difficult.

The other problem that deals with the waiver considerations is that—and I don't know how this ties in exactly, but recently, the VA has enlisted the help of collection agencies, and there are several large, huge collection agencies in Georgia and Texas that are going out against a lot of these debts.

I have talked to a number of the collectors, and they are low-level collectors that are not versed in the law, and they tell veterans that they can't get waivers, that this has already been established as a debt and there's nothing you can do. They tell the veterans that you cannot discharge in bankruptcy a debt to the Federal Government. They tell the veteran to send post-dated checks. I had last week a veteran, 100 percent disabled, no means of income other than disability, sent $10,000 worth of post-dated checks to a bill collector in Atlanta for the VA. There were 20 checks that were all post-dated for 2 years.

I think that that is—and—I mean, that's outrageous. This poor veteran will not be able to make good on those checks, and the first one that gets deposited and bounces, there is criminal liability in many States for that. The collector told this person that, you know, "We're calling from the Federal Government. You have to do this." And they believe them. I'm appalled by that.

I realize that the VA doesn't have control over how these agencies work, but because at least 68 percent of the debt is being waived right now, why are we having these collection agencies out shaking down people and extorting money from them? I mean, that is unnecessary, and I think it is very unfair to individuals who really don't have a fundamental understanding of what the rules are in life. A lot of the people are in a very disadvantaged position, and they do what they're told.

I think that the waiver standards—if we stop the collection right now, today or tomorrow, and say, "Let's decide who we want to collect from,"—and the standards, I think, are pretty good. I mean, I think the VA has done a commendable job by the testimony I heard this morning, and I'm impressed by it, that they are doing a tremendous job to waive the debt that comes in the door. The prob-

lem is, is what doesn't come in the door, and those are the people that are at the bottom of the heap—the real disadvantaged people that are just scratching for their medicine and their food.

I think the waiver standards themselves are good; it's making the connection between the debtor and the VA, that's the problem.

Mr. STAGGERS. Some of those cases of the debt collection abuses; if you could share with us some of the details, I would appreciate that also.

Mr. LEEN. Well, I'd be happy to do that. I will send large packages of letters every month to you.

Mr. STAGGERS. Okay. You talked about taxable income and I hope that the VA—that some of the people with the Department are in the audience and hear that. I'd ask them to come forward and may respond to some of the allegations. Could somebody do that? Somebody with the Department?

Mr. KANE. I am not familiar with the particular letter that Mr. Leen refers to, but we say that it's a taxable event when we waive this debt. Also, I have not seen the Revenue ruling he referred to. However, I'm told by counsel who works with me that that Revenue ruling specifically States that it's not precedent and it cannot be cited as precedent.

I'm at a disadvantage here, not having seen the document.

Mr. STAGGERS. I think that he mentioned that it may not be. Can you——

Mr. KANE. We have tried to get a clear answer from IRS on this issue, and I have not been successful.

Mr. STAGGERS. Are you telling the veterans that—I think you said you don't know whether you were telling them—can you find out?

Mr. KANE. I will. If we are saying anything at all about taxes, we should qualify it by saying that this may be a taxable event, and you should contact the IRS. We will look into that.

Mr. STAGGERS. If you could let the Subcommittee know, I would appreciate it.

Mr. KANE. Yes.

Mr. DEMING. Mr. Chairman, may I make a brief followup comment to Mr. Leen's remarks?

Mr. STAGGERS. Yes, you may.

Mr. DEMING. In regard to what you were asking earlier, it seems to me that we can really make substantial improvement in these form letters that go out to these veterans. After all, that's the first point of contact; that's the first basic bit of information that the veteran gets.

I attached some of the older letters that were used back in 1988 and 1989 in testimony. I'm not sure that they've changed much. One point I'd make relates to this:

The DVA never informs the veteran that there is any real distinction between disputing the existence or the amount of debt. By existence, I mean whether it's a bureaucratic foul-up or legal validity, and applying for a waiver.

I've seen many instances where a veteran has written back to the VA disputing the amount or disputing the legal existence of the debt and asking for a hearing and they'll get a letter back from the VA saying, thank you for your application for a waiver, please

fill out the financial statement. As we have seen here this morning, there seems to be some disagreement among attorneys as to whether or not veterans are legally liable for taxable income here in the waiver situation, and certainly there's never any effort made by the DVA to tell the veteran the difference between wiping the slate clean and deciding there's no debt at all, and granting a waiver.

That may have very significant legal consequences to the veteran, and it seems to me that the DVA ought to be more cognizant of that distinction and inform the veteran of it. I would also point out—and perhaps this is a matter for another day, Mr. Chairman—there seems to be some dispute here as whether or not the Agency really recognizes the veteran's right to dispute the debt.

In some of the form letters that I've seen, it says right out in plain language, you have the right to dispute the debt, but if you look at the General Counsel Precedent Opinion 19–89, it seems to suggest that at least in the Home Loan area, the debt, because it arises as a matter of contract, is established and may not be challenged. I don't understand that circular reasoning, and I'm not exactly sure if the VA is aware of this apparent conflict. It's something to take a look at in this larger issue of the form letters going out because I think the vets need better information.

Mr. STAGGERS. I agree. Mr. Brewster, do you have any questions?

Mr. BREWSTER. Mr. Chairman, I just want to say that I appreciate the opportunity to sit in on this hearing. I think you've conducted an excellent hearing. As a new member of the subcommittee, it's been very enlightening to me and given me a chance to learn. I didn't even know this problem existed, especially the fact that you couldn't have an attorney.

I do think there are mechanisms where the reasonable fee can be handled through the State bar associations or whatever type of peer review committees are there. I like your legislation and would like to help you with it.

Mr. STAGGERS. If the gentleman would yield, I want to thank you for your participation and on choosing this subcommittee. I haven't had a chance to really do that. The fact that you stayed throughout the whole hearing, I think speaks a large volume of how important you're going to be to the future of this subcommittee. I appreciate your interest and your work and I appreciate your offer of assistance on this legislation.

Mr. BREWSTER. Thank you.

Mr. STAGGERS. Mr. Smith, do you have any questions?

Mr. SMITH. No, thank you, Mr. Chairman.

Mr. STAGGERS. I want to thank the panel. I think it was a good hearing and the hearing is now concluded.

[Whereupon, at 11:00 am., the subcommittee was adjourned.]

APPENDIX

MARCH 14, 1991
SUBCOMMITTEE ON HOUSING & MEMORIALS AFFAIRS
HEARING ON DEBT WAIVERS
OPENING REMARKS, HONORABLE DAN BURTON

THANK YOU, MR. CHAIRMAN. LAST YEAR, THE SUBCOMMITTEE ON HOUSING AND MEMORIAL AFFAIRS MET TO EXAMINE THE V.A.'s CRITERIA FOR GRANTING WAIVERS OF INDEBTEDNESS TO VETERANS WHOSE HOMES HAD GONE INTO FORECLOSURE.

AT THIS TIME, THE DEPARTMENT OF VETERANS AFFAIRS GRANTED FEW WAIVERS OF INDEBTEDNESS. UNFORTUNATELY, THE V.A.'s DETERMINATION TO COLLECT DEBTS, ARISING OUT OF PARTICIPATION IN THE HOME LOAN PROGRAM, WAS HAVING SEVERE REPERCUSSIONS IN THE VETERANS' COMMUNITY. SEVERAL WITNESSES, TESTIFYING BEFORE THIS SUBCOMMITTEE, DESCRIBED HOW THE V.A.'s REFUSAL TO WAIVE THEIR DEBT HAD DAMAGED THEIR ABILITY TO OBTAIN CREDIT AND PROVIDE FOR THEIR FAMILIES. SUCH A DEBT COLLECTION POLICY MIGHT HAVE BEEN JUSTIFIABLE, IF IT RESULTED IN INCREASED COLLECTIONS WHICH COULD BE USED TO HELP OTHER VETERANS. UNFORTUNATELY, THIS WAS NOT THE CASE.

IN RESPONSE TO THIS HEARING, OUR SUBCOMMITTEE CONCLUDED THAT THE V.A. NEEDED TO ADOPT A MORE COMPASSIONATE CRITERIA FOR DECIDING WHEN TO GRANT A WAIVER OF INDEBTEDNESS AND WHEN TO PURSUE A DEBT. THE NEW DEBT WAIVER CRITERIA, MANDATED BY PUBLIC LAW 101-237, APPEARS TO HAVE HAD A POSITIVE EFFECT WITHIN THE VETERANS' COMMUNITY. STATISTICS COMPILED BY THE DEPARTMENT OF VETERANS AFFAIRS SHOW THAT THE NUMBER OF DEBT WAIVERS GRANTED BY THE V.A. HAS INCREASED BY OVER 40

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PERCENT SINCE FY 1989. I BELIEVE THAT THIS INCREASE IS A POSITIVE DEVELOPMENT. HOWEVER, I LOOK FORWARD TO HEARING MORE TESTIMONY ON THIS SUBJECT FROM OUR VETERANS SERVICE ORGANIZATIONS.

THE LAST ISSUE THIS SUBCOMMITTEE WILL EXAMINE TODAY CONCERNS WHETHER VETERANS SHOULD BE ABLE TO OBTAIN LEGAL COUNSEL AT DEBT COLLECTION PROCEEDINGS. UNDER CURRENT LAW, ATTORNEY FEE LIMITATIONS PREVENT VETERANS FROM OBTAINING SUCH COUNSEL DURING THESE PROCEEDINGS. IT IS MY BELIEF THAT THE TIME HAS COME TO REMOVE THESE LIMITATIONS. THE STATE AND FEDERAL REGULATIONS WHICH VETERANS ENCOUNTER AT DEBT COLLECTION PROCEEDINGS ARE BOTH COMPLEX AND LENGTHY. IT IS ONLY FAIR THAT OUR VETERANS BE AFFORDED THE OPPORTUNITY TO HAVE SOMEONE KNOWLEDGEABLE ABOUT THESE REGULATIONS AT THEIR SIDE.

MR. CHAIRMAN, I LOOK FORWARD TO HEARING TESTIMONY FROM THE DEPARTMENT OF VETERANS AFFAIRS ON YOUR DRAFT LEGISLATION WHICH SEEKS TO REMOVE ATTORNEY FEE LIMITATIONS IN DEBT COLLECTION PROCEEDINGS. I HOPE THEIR COMMENT IS FAVORABLE.

STATEMENT OF

S. ANTHONY McCANN

ASSISTANT SECRETARY FOR FINANCE AND PLANNING

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON HOUSING AND MEMORIAL AFFAIRS

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

MARCH 14, 1991

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today. As the Chief Financial Officer, I am responsible, not only for the debt collection policy, but also for the waiver policy of the Department of Veterans Affairs. The Debt Collection Act of 1982, as well as subsequent legislation, has placed a great deal of emphasis on the collection of outstanding debts owed to federal agencies. All federal agencies are required to follow the Federal Claims Collection Standards issued jointly by the U.S. Government Accounting Office and the Department of Justice. These standards set forth strict requirements for vigorous debt collection by each federal agency. Yet, we are also required by Congress to consider waiver of collection of debts owed by our veterans and other beneficiaries. It is not an easy task to balance both the debt collection and waiver requirements, but I believe the Department of Veterans Affairs has established a waiver policy that fully meets the intent of Congress.

I would now like to discuss the implementation of the new criteria for waiver of indebtedness. These criteria were enacted as part of Public Law 101-237, the Veterans Benefits Amendment Act of 1989. Our waiver program, which is authorized by section 3102, title 38, of the United States Code, is based upon the application of the standard of equity and good conscience. This standard is applied at the request of

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veterans and other beneficiaries in order to determine whether VA should continue to pursue collection of debts arising out of participation in both VA benefit and home loan programs. The 1989 legislation did not revise this standard of equity and good conscience. Instead, it changed the elements that preclude the application of this standard.

In assessing the impact of the legislation, we evaluated our entire waiver program. We concluded that in order to effectively implement the legislation we had to deemphasize the impact of the veterans degree of fault in the creation of the debt while increasing the emphasis on the role of the other elements under the standard of equity and good conscience. Our goal was to create a standard in which all elements had equal weight in the waiver decisionmaking process.

On February 12, 1990, we issued VBA Circular 20-90-5, New Standards for Waiver Consideration, to our Committees on Waivers and Compromises. This circular not only introduced the legislative revision of waiver criteria but also introduced a new approach to the waiver consideration process. We eliminated the strict guidelines for decisionmaking and instructed the Committee members to use a more flexible approach when evaluating the elements under the standard of equity and good conscience.

In March of 1990, the Chief Benefits Director convened a special task force to revise the training guide used by the Committees on Waivers and Compromises. The task force was composed of both field station and Central Office personnel and included staff from both the General Counsel and the Board of Veterans Appeals. The new training guide, TG 20-90-2, was published on April 23, 1990. It incorporated the new waiver standards and decisionmaking approach of the circular and also provided numerous case examples of the application of both.

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We also conducted training sessions at our Philadelphia Regional Office in May of 1990 for Committee members from each field station. These members, in turn, provided training to the rest of the Committee members at their station. The training session consisted of an explanation and analysis of the legislative change, as well as thorough discussions of VBA Circular 20-90-5 and Training Guide TG 20-90-2.

In an opinion dated July 17, 1990, the General Counsel concluded that the section of the legislation that pertained to the new waiver standards was not retroactive and became effective only on the day that the President signed the law, December 18, 1989. The General Counsel held that under section 1.969, title 38, Code of Federal Regulations, a final waiver decision made before December 18, 1989, may be reconsidered in view of the amendments to section 3102, title 38, United States Code, made by section 311 of Public Law 101-237. Only that portion of the debt outstanding on the law's effective date, however, would be eligible for waiver reconsideration. As a result of this opinion, we published VBA Circular 20-90-34 on December 31, 1990, which provided procedures for reconsideration of final waiver denials made prior to the enactment of Public Law 101-237.

We have also revised our regulations on the standards for waiver consideration. This revision is currently in the concurrence process. Finally, in January and February of this year, we gave presentations on the new standards for waiver consideration at both the VBA Finance Officers Conference and the American Legion Department Service Officers School.

The elimination of "material fault" and "lack of good faith" as absolute bars to the granting of waiver and the revised approach to decisionmaking by the Committees on Waivers and Compromises have led to an increase in the number of waiver

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requests granted. In FY 1989, our Committees on Waivers and Compromises granted 21 percent of waiver requests received on compensation, pension, and education benefit overpayments and home loan program debts. In FY 1990, 56 percent of these waiver requests were granted. For the first quarter of FY 1991, we have granted 68 percent of the waiver requests received. Mr. Chairman, I have attached to my prepared statement a more comprehensive statistical analysis for your further study.

Mr. Chairman, this concludes my testimony. I will be pleased to answer any questions you or the Members of the Subcommittee may have.

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COMMITTEES ON WAIVERS AND COMPROMISES

FY 1989

	C & P	HOME LOAN	EDUC	TOTAL
Waiver Requests Considered:	21,605	13,796	4,946	40,347
Waiver Requests Granted:	5,160	2,734	764	8,658
Percentage Granted:	24%	20%	15%	21%

FY 1990

Waiver Requests Considered:	20,323	14,246	4,165	38,734
Waiver Requests Granted:	12,091	8,150	1,570	21,811
Percentage Granted:	59%	57%	38%	56%

FY 1991 (1st Quarter)

Waiver Requests Considered:	6,597	4,160	1,147	11,904
Waiver Requests Granted:	4,524	3,055	512	8,091
Percentage Granted:	69%	73%	45%	68%

TOTAL DOLLAR AMOUNT WAIVED:

FY 1989: $35,429,871

FY 1990: $125,524,435 *

FY 1991 (1st Qtr): $59,366,525

* New waiver standards implemented in this Fiscal Year

STATEMENT OF
RICHARD F. SCHULTZ
ASSOCIATE NATIONAL
LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON HOUSING AND MEMORIAL AFFAIRS
OF THE
HOUSE COMMITTEE ON VETERANS AFFAIRS
MARCH 14, 1991

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than 1.3 million members of the Disabled American Veterans and its Ladies' Auxiliary, I wish to thank you for inviting our comments relative to the Department of Veterans Affairs (VA) implementation of the new waiver criteria for waivering of indebtedness and draft legislation affecting attorney fees in connection with VA loan guaranty indebtedness cases.

At the outset, Mr. Chairman, DAV wishes to express our deep appreciation to you and the members of the Subcommittee for your efforts to ensure that VA considers equity and good conscious when determining waivers of VA overpayments. Clearly, action taken by this Subcommittee, its counterpart in the Senate, and indeed the entire Congress, by way of enactment of the waiver provisions contained in Public Law 101-237, has had a most positive impact on the lives of those veterans seeking waiver of VA indebtedness.

Absent a finding of fraud, misrepresentation, or bad faith, the VA will now look beyond material fault and consider the special circumstances in each individual case. Prior to this act, the mere fact that a veteran is receiving compensation or pension and may have the ability to repay a debt at some future date was a major contributing reason for denying otherwise justifiable waivers. Again, we commend this Subcommittee and its counterpart in the Senate for its actions in granting a degree of relief to many individuals who, due to circumstances beyond their control, incurred a debt to the U.S. government.

Mr. Chairman, by and large, DAV National Service Officers report that VA is approving waiver requests consistent with the spirit and intent of Public Law 101-237 -- especially with respect to loan guaranty indebtedness. We have received some reports, however, that compensation, pension and education overpayments are not receiving the same consideration by VA as loan guaranty cases. This, we believe, is due to the many and varied interpretations of "fault" as described in Veterans' Benefits Administration (VBA) Circular 20-90-5, dated February 12, 1990.

This circular, in part, describes fault as "the commission or omission of an act that directly results in the creation of the debt." The circular goes on to point out that "...where a debt is the result of an erroneous payment or overpayment of a benefit (e.g. compensation, pension, and education), fault would exist if the debtor reasonably should have known that he or she received an erroneous payment or an overpayment."

Mr. Chairman, we believe that the example cited in VBA Circular 20-90-5, as well as those contained in VA's Training Guide on Waivers, may lead some Waiver Committee members to assume that a more strict standard is to be applied in compensation, pension and education overpayment cases than those applied to loan guaranty indebtedness waiver requests.

The following VA statistics, we believe, supports this:

VA waiver statistics for Fiscal Year 1989 (prior to implementation of the new waiver standards) reveal that compensation and pension waivers were granted at a rate 4 percent higher than those involving loan guaranty indebtedness. During the first quarter of Fiscal Year 1991 (subsequent to the full implementation of the new waiver standards) the reverse is true, loan guaranty debt waivers are 4 percent greater than compensation and pension overpayment waivers.

Mr. Chairman, there are a number of reasons why overpayments occur in compensation, pension and educational claims, not the least of which is due to the volume of claims activity at VA regional offices and their attendant backlogs. While I will not go into the issue of claims backlogs at VA regional offices (VAROs) in this statement, I am sure you will agree that it is well documented that VAROs have a major problem in delivering timely benefit determinations.

Simply put, Mr. Chairman, VA is unable to timely respond to and take action on information provided to them by veterans regarding issues such as a change in dependency, educational program, etc. The lack of timely action by VA, in many cases, is the sole cause of an overpayment.

DAV certainly does not wish to see veterans "unjustly enriched," as a result of an overpayment waiver. However, we would submit that the extra time and effort VA must expend in corresponding with veterans regarding overpayments -- caused by the tardy actions taken by VA to adjust awards -- should be administratively waived, thus saving VA valuable staff time and money.

Mr. Chairman, another area of concern that has come to our attention surrounds VA General Counsel precedent opinion 22-90, dated July 17, 1990. This opinion provides that reconsideration of overpayments denied prior to December 18, 1989 (the date of the signing of Public Law 101-237) may be undertaken by VA and, if allowed, monies collected <u>after</u> December 18, 1989 may be refunded to veterans.

DAV is aware that a number of veterans whose claims for waiver of loan guaranty indebtedness have been granted are upset by the fact that monies recovered by VA prior to December 18, 1989 are not being returned to them.

Consider if you will, Mr. Chairman, two identical loan guaranty indebtednesses. In one case, a veteran is receiving VA compensation payments for a service-connected combat wound and in the other case the individual receives no federal benefit payments. The service-connected disabled veteran has his compensation offset to repay the debt and the other, since he has no federal benefits to offset, does not repay the loan guaranty indebtedness.

With the enactment of Public Law 101-237, both apply for and are granted waivers of their loan guaranty indebtedness. The veteran with no federal benefit payments has his debt waived in full, while the service-connected disabled veteran is only able to have that portion of the debt still in effect after December 18, 1989 waived.

Mr. Chairman, the purpose for bringing this particular situation to your attention is twofold. First, it serves as a reminder that prior to the enactment of Public Law 101-237, service-connected disabled veterans, for the most part, were the only category of veterans repaying loan guaranty indebtedness. Also, this cited example illustrates the frustration felt by many service-connected disabled compensation recipients at being

singled out for disparate treatment -- especially in light of the entitlement cuts recently enacted in the Omnibus Budget Reconciliation Act of 1990.

* * *

Mr. Chairman, the draft legislation provided to DAV by the Subcommittee staff proposes to remove current limitations on payments of attorney fees in cases in which the United States is seeking to collect an indebtedness to the United States arising out of a housing loan guaranteed or insured by the Department of Veterans Affairs.

At the outset, Mr. Chairman, DAV wishes to acknowledge your efforts to ensure that veterans with loan guaranty indebtednesses be afforded an opportunity to present their claims to VA for waiver of their indebtednesses in the best possible light.

As you know, currently attorneys may not charge a fee for services rendered prior to the date on which the Board of Veterans Appeals first makes a final decision in a case. This restriction was placed in law primarily to preserve the long-standing nonadversarial nature of VA's adjudication process.

DAV recognizes that loan guaranty indebtedness cases are, on occasion, complicated by individual state laws. It is for that reason that we do not oppose your draft legislation to allow veterans to pay for representation by attorneys in loan guarantee indebtedness cases. We would note, however, that the waiver provisions enacted as part of Public Law 101-237 have dramatically increased the number of loan guaranty overpayments waived by VA at the regional office level, largely reducing the number of appeals filed with respect to loan guaranty indebtedness.

And again, as mentioned above, the current attorney fee restrictions in Section 3404(c) Title 38, USC are designed to preserve the nonadversarial nature of the VA's adjudication process. As I am sure you are aware, DAV, through its corps of some 280 National Service Officers located at regional offices throughout the country, provides free, high quality, nonattorney representation to our nation's veteran population. Therefore, we do not wish to see VA regional office operations transformed into an adversarial process.

Your draft bill, Mr. Chairman, also allows for a "reasonable fee" to be charged by attorneys for representation in loan guaranty indebtedness cases at regional offices. While we do not wish to deprive attorneys of reasonable fees for their representation of veterans in loan guaranty indebtedness cases, we believe that some fee approval and review mechanism must be in place to guard against the charging of exorbitant fees by certain unscrupulous individuals.

In closing, we wish to again thank you Mr. Chairman, and the members of the Subcommittee, for your outstanding advocacy on behalf of America's veteran population -- especially those less fortunate individuals who have incurred a debt to the VA largely due to circumstances beyond their control.

This concludes our statement, Mr. Chairman. I would be happy to respond to any questions you may have.

STATEMENT OF

JOHN C. BOLLINGER, ASSOCIATE LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON HOUSING AND MEMORIAL AFFAIRS

CONCERNING

VA HOME LOAN WAIVERS OF INDEBTEDNESS

AND

LEGISLATION AFFECTING ATTORNEY FEES

March 14, 1991

Mr. Chairman and Members of the Subcommittee, on behalf of the members of Paralyzed Veterans of America (PVA), I wish to thank you for inviting us to testify today. We appreciate this opportunity to comment on the implementation of standards mandated by Public Law 101-237 for waivers of indebtedness. We are also pleased to present our views on legislation which would allow veterans to employ and pay reasonable fees to attorneys at any stage in a case involving VA home loan guaranty indebtedness under Chapter 37 of title 38, USC.

The existence of a viable benefit program to assist veterans in purchasing homes remains extremely important to the members of our organization. Limited to accessible housing in an economy which has seen the cost of homes and construction more that double over the past decade, individuals using wheelchairs are especially vulnerable to downturns in the national housing market. Over the years, VA's Home Loan Guaranty Program has enabled many paralyzed veterans to become home owners. For that reason, we take special interest in the well-being of this important program.

Standards for Waiver Consideration

Public Law 101-237, the "Veterans Home Loan Indemnity and

Restructuring Act of 1989," effective December 18, 1989, made several important changes in the way the Department of Veterans Affairs must consider waiver requests for benefit debts. As you know, PVA has strongly endorsed the standards set forth in that legislation. At this time, approximately one year after instructions were sent to VA regional offices regarding implementation of criteria set forth in PL 101-237, we are pleased to state that, in general, VA appears to have implemented a compassionate collection policy in resolving cases involving requests for waiver. We have had few complaints from our members.

At the outset, we agree that the elements of fraud, misrepresentation, or bad faith should automatically preclude the granting of a waiver and that Committees on Waivers and Compromises (COWC) must prove willful intent on the part of the debtor. Further, we are satisfied that in most cases VA is applying the "equity and good conscience standard" as the Congress intended. Certainly, every case is unique and must be decided on its own merits. We continue to urge VA's COWC's to resolve any reasonable doubt in the debtor's favor when considering the elements of "fault," "unjust enrichment," and "undue financial hardship" in the case of loan guaranty debts.

As we stated last year before this Subcommittee, PVA believes the "equity and good conscience" standards should be applied to divorced veterans who have lost title to a home as part of a property settlement in the same manner that such standards are applied to an individual on active duty who has been ordered to change duty stations. We believe an absence of fault finding would be appropriate where the veteran had no reasonable choice other than to sell or transfer the property. We do not see how the loss of title to a home in a divorce case would, in any way, result in unfair enrichment to the veteran, nor do we believe it

is fair to deny a waiver request in these cases simply because such a veteran would not suffer undue financial hardship. With the exception of cases where a veteran fails to pay court ordered alimony or child support depriving the spouse of the means by which to make mortgage payments, we believe divorced veterans should not be held liable due to VA housing debts created by ex-spouses.

Again, it appears to us that COWC's have been given instructions to implement standards necessary to properly address instances involving divorce cases where the veteran has no reasonable choice but to sell or transfer title to a home to the spouse. PVA strongly urges VA to make a greater effort to ensure that every veteran or service-person, who must transfer a VA guaranteed property when there is no reasonable choice, is fully aware of all the consequences of "release of liability" provisions and the qualifications of the person who has taken ownership of the property. Although the lack of such information should not be held against the veteran in the event of a waiver request, we believe it is important that he or she has sufficient information to potentially avoid any liability.

Attorney Fees in Connection with Loan Guaranty Indebtedness Cases

Mr. Chairman, PVA totally supports your bill to allow claimants seeking waivers arising out of home loan guaranty debts to employ and pay reasonable fees to attorneys at any stage of the proceeding. We believe that in these cases in which VA is the plaintiff seeking to recover an alleged debt from a veteran, the veteran should have the right to obtain legal representation in

what, for many individuals, is the largest single financial commitment of their lives.

As a fundamental ingredient of our support for the concept of judicial review for veterans, PVA believes there is a clear distinction between situations where a veteran makes a claim for benefits and situations where VA initiates an administrative action to recover a debt. Notably, VA made this same distinction between 1974 and 1986 when debt collection and benefits forfeiture proceedings were exempted from the attorney fee restrictions.

PVA supported this concept in legislation leading up to the passage of Public Law 100-687, the "Veterans' Judicial Review Act." Although the final version of that law did not incorporate the distinction between claims for benefits and non-claim cases, we firmly believe that your bill should be enacted in order to fully protect the basic rights of veterans in cases involving VA home loan guaranty indebtedness.

Mr. Chairman, PVA thanks you for your continued concern for the well-being of this important program and for the rights of veterans who use it. We will work with you in any way we can to ensure passage of your bill. Thank you for holding this hearing. I will be glad to answer any questions you may have.

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STATEMENT OF

VIETNAM VETERANS OF AMERICA

Presented By

Paul S. Egan
Legislative Director

Before The
House Veterans Affairs Subcommittee on
Housing and Memorial Affairs

On

Attorney Fee Limits Imposed on Veterans
in Administrative Debt Collections

March 14, 1991

Mr. Chairman and members of the Subcommittee, the Vietnam Veterans of America (VVA) appreciates this opportunity to present its views at today's hearing. We will generally confine our comments this morning to the topic of attorney fee limitations imposed on veterans allegedly indebted to the Department of Veterans Affairs (VA). Concerning the other topic under consideration, how well the VA is implementing new criteria for waivers of indebtedness contained in P.L. 101 - 237, the VVA is satisfied that implementation of the new law is going forward successfully. The only concern we have to raise in this regard is that all veterans with similar circumstances be treated in the same way regardless of which Regional Offices are rendering judgments on waiver applications.

In 1988, after a 10 year struggle, the Congress finally passed legislation authorizing judicial review of adverse benefits adjudications. In doing this, a new Article I Court was established and a Civil War era law limiting to $10.00 the fee veterans may pay attorneys to represent them was almost completely repealed, almost completely. The same attorney fee limitation still remains in place when a veteran is alleged to have incurred an indebtedness to the VA.

The vestiges of this Civil War era law are by any definition an anachronism so disfunctional as to be best characterized as wholly contrary to the legitimate interests of veterans and having the effect of rendering allegedly indebted veterans vulnerable to exploitation by the federal government.

When the $10.00 fee limitation was first imposed, the purpose was to protect the veteran from exploitation by unscrupulous attorneys. This is an important point because the VA consistently characterizes itself as holding the veteran's best interests at heart. Normally the VA holds itself out as paternalistic, assuming a posture in which it is better qualified than the veteran to determine what is best for the veteran.

Even the arguable wisdom of the VA's paternalistic posture is contradicted, however, when the agency adopts a policy deliberately aimed to deprive the veteran of any defense whatever against charges of indebtedness. Interestingly enough, the VA from 1974 to 1986 was of the view that the $10.00 fee limitation had no application in administrative debt collection actions. In 1986, however, the VA's General Counsel issued on opinion reversing the then prevailing practice. What has become clear is that without legislation specifically designed to allow veterans to defend themselves by hiring attorneys, the agency may continue to impose the $10.00 fee limitation. Moreover, even if the VA Secretary, by administrative action, suspended the General Counsel opinion of 1986, nothing would guaranty the permanency of this change without a statutory adjustment.

Last year, the VVA supported legislation introduced in the Senate, S. 2615, by Senators Rockefeller and Cranston and legislation introduced in the House, HR. 5169, by Chairman Staggers. The Senate legislation was pending action as part of S. 2100 just prior to adjournment of the 101st Congress and the House Veterans Affairs Committee narrowly defeated the Staggers legislation on a voice vote on October 12, 1990.

The VVA continues to support this legislation although it is our firm belief that the fee limitation be set aside for all administrative debt collection actions taken by the VA against the veteran. The indebtedness created by home loan default may be the most dramatic of the debt collection cases, but it is important to remember that debt collections of any kind are only alleged and that the veteran subject to debt collection is the only individual best able to determine whether an attorney should be hired in his or her defense.

An alternative approach to this matter, having the same "level the playing field" effect would limit the VA to the same $10.00 attorney expenditure as that imposed on the veteran. We offer this alternative in tongue and cheek fashion in order to highlight the absurdity of the VA's current practice and to make the plight of allegedly indebted veterans unmistakably clear.

As with your efforts last year, Mr. Chairman, the VVA appreciates your leadership this year on this very troubling issue. The VVA stands ready to assist your efforts this year as aggressively as is necessary to see this matter resolved.

Mr. Chairman, this concludes our statement.

STATEMENT OF

DENNIS M. CULLINAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON HOUSING AND MEMORIAL AFFAIRS
UNITED STATES HOUSE VETERANS' AFFAIRS COMMITTEE

WITH RESPECT TO

REVIEW OF VA HOME LOAN CRITERIA FOR WAIVERS OF INDEBTEDNESS AND DRAFT LEGISLATION AFFECTING LOAN GUARANTY INDEBTEDNESS

WASHINGTON, D. C. MARCH 14, 1991

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the over 2.9 million members of the Veterans of Foreign Wars of the United States and its Ladies Auxiliary, I wish to sincerely thank you for including us in this forum which will address the operation of the VA home loan program with respect to reviewing the implementation of the new criteria for waivers of indebtedness as well as draft legislation affecting attorney's fees in connection with loan guaranty indebtedness cases. It is both a pleasure and a privilege to take part in an effort to improve the operation of this invaluable program with respect to its treatment of veterans who have come upon financial difficulties. The Veterans of Foreign Wars remains firmly committed to working for the improvement of the VA home loan program and the services that it offers to this nation's deserving veterans.

With respect to the new criteria regarding VA home loan waivers of indebtedness, the VFW has been and continues to be a strong supporter of liberalized rules for determining when a veteran whose home has gone into foreclosure would be required to make restitution to VA. It is our belief that a veteran would not intentionally default on a loan and that when this does occur, it is only the result of unexpected economic hardship of the highest order. Thus, the new criteria which require that all possible consideration be given to granting a veteran a waiver of indebtedness in the event that his or her loan goes into default for reasons beyond his or her control are both proper and appropriately compassionate.

We will now turn to the draft proposal which you, Mr. Chairman, have asked us to comment upon which would amend title 38 United States Code (USC) so that veterans seeking waivers of indebtedness arising out of the VA Home Loan Guaranty program would be allowed to employ attorneys to represent them at any stage of the proceeding. In this regard, the VFW supports no longer applying the limitation on attorney's fees established by title 38 USC 3404 and 3405. The issues and statutes related to alleged indebtedness to VA are extraordinarily complex, while the amount of the indebtedness may be very high. Therefore, we believe there should be no bar to hiring an attorney by a veteran to assist in successfully presenting his case.

Although all debt collection actions may be emotionally as well as financially overwhelming, those which involve the VA home loan program are especially problematic. Along with having to be completely familiar with complicated and highly technical federal statutes governing a VA foreclosure, an individual must also be thoroughly acquainted with the involved matters of state law which are relevant to the procedures employed when forfeiture occurs and the property under a VA guaranteed loan is sold at a loss in order to realize a fair and equitable determination. There should be little disagreement that there are very few veterans borrowers--especially among those who are subjected to VA debt collection action--who are so equipped. Simply put, the large majority of all such veterans are at a loss to deal with the overwhelming technical detail of federal as well as state statutes in such cases. Not only are these veterans neither able to adequately defend their position before VA nor contend with subsequent debt collection action, but may

be also unjustly and unfairly burdened with a greater amount of indebtedness because of unfamiliarity with pertinent state law with respect to forfeiture and the disposition of forfeited property.

We would also point out that debt collection proceedings are highly adversarial in nature. This is in contrast to claims for benefits wherein VA is obliged to give the veterans the "benefit of the doubt" and, in fact, often assists a veteran in successfully prosecuting his claim.

With respect to pursuing a veteran who is allegedly in debt, VA is committed to taking "aggressive action." This means that along with assailing veterans with threatening computer generated letters, they are also subjected to a brutal arsenal of sanctions such as garnishment of wages when the veteran is a federal employee, reporting of the debt to credit reporting agencies, referral to the Internal Revenue Service for seizure of the veterans income tax refund, referral to private collection agencies, offsetting VA disability compensation for service-connected disabled veterans and even causing the United States Department of Justice to institute judicial proceedings against the veteran. Against this federal juggernaut, as the law is currently written, the veteran must essentially go it alone until after a Board of Veterans Appeals (BVA) decision is rendered. Clearly this is neither fair nor equitable, nor is there any danger that allowing lawyers into the system will make the proceeding any more adversarial than at present.

Finally, we find it highly significant that for a number of years VA itself recognize the fundamental distinction between affirmative benefit claims and debt collection proceedings. From 1974 to 1986 VA specifically exempted debt collection as well as benefit foreclosure proceedings from the attorney fee restriction. This position was abruptly abandoned by VA in May of 1986 when a General Counsel Opinion--citing the need for consistent application of the law--concluded that all VA administrative proceedings would be subjected to the fee statutes. It is clear to us that while the objective of consistency may have been realized with the ruling, the higher goal of providing veterans with fair and equitable procedures with respect to debt collection actions was undermined.

Having said this, it would only seem fair and logical that veterans be allowed to retain an attorney in such matters at any stage in the process rather than only after a ruling has been made by the BVA. In the intervening period between when a veteran's loan goes into default and a final determination is made at the Board of Veterans Appeals, the veteran's indebtedness may increase considerably as interest is charged and the value of the property, in many cases, diminishes. Additionally, allowing attorney involvement at an early stage allows for increased familiarity with the case and the accumulation of pertinent facts and details which permit for a better and fairer defense when a veteran is allegedly in debt to VA.

Mr. Chairman, once again I would like to thank you for having invited the participation of the Veterans of Foreign Wars in today's important hearing. Despite some of the problems which have confronted the VA home loan program in recent years it must be recognized that with respect to lending assistance to a large number of this nation's veterans the program has been an unqualified success. Germane resolutions are appended to this statement. I would be happy to respond to any questions you may have.

March 14, 1991

TESTIMONY
of
DAVID A. LEEN
BEFORE THE SUBCOMMITTEE ON HOUSING AND MEMORIAL AFFAIRS OF THE COMMITTEE ON VETERAN'S AFFAIRS, U.S. HOUSE OF REPRESENTATIVES

CHAIRMAN STAGGERS AND MEMBERS OF THE COMMITTEE:

My name is David Leen, and I am an attorney in private practice from Seattle, Washington. I thank the subcommittee for inviting me to speak on important issues affecting hundreds of thousands of veterans. I am not a paid lobbyist, but am here at my own expense, as many of the veterans for whom I speak are homeless, destitute, and unrepresented for the most part.

I am supporting legislative proposals to allow veterans against who the VA asserts claims to hire attorneys to advise them. I also urge that wholesale changes be made in the manner that the government treats veterans who may be indebted because of home loan deficiencies and benefit overpayments.

DEBT COLLECTION

My interest in this area arises from a number of class action lawsuits our law firm is litigating against the Department of Veterans Affairs over the collection of home loan deficiencies.[1] Our firm receives approximately 100 letters and telephone calls per month from veterans who are subjected to collection efforts on behalf of the VA. These are typically from persons not involved in the litigation but who have tragic stories to tell.

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[1]These cases are as follows: *Whitehead v. Derwinski*, 904 F.2d 1362 (9th Cir. 1990), where the Ninth Circuit Court of Appeals affirmed a class action ruling voiding $63,000,000 in VA deficiency claims and ordered the refund of approximately $1 million to several thousand veterans; *U.S. v. Britten v. Derwinski*, No. C88-1442WD (Dist. Ct. Wn. 1991 - Slip Opinion) is a similar class action on behalf of Alaska veterans and the same relief has been ordered. In *Carter v. Derwinski*, ___ F. Supp. ___ (Feb. 28, 1991), the Idaho Federal Court voided about $50,000,000 in deficiency debt and ordered the VA to refund all funds collected within the past 6 years. In Wisconsin, in *U.S. v. Davis v. Derwinski*, and in Minnesota, in *Vail v. Derwinski*, 742 F. Supp. 1039 (D. Minn 1990), the same relief was granted. Other similar litigation is pending in California, Arizona, Oregon, Montana, and is contemplated in other states because the VA does not comply with constitutional due process requirements and state law debtor protections. Hundreds of millions of debts have been or may be voided in these cases, and refunds in the millions are being ordered by the Federal courts.

The problem arises to the level of a national scandal. The VA currently is attempting to collect in excess of $2 billion in home loan deficiency debts alone from about 350,000 veterans. The VA is likely the world's largest collection agency. Veterans are subject to withholding of military pay, disability, medical and education benefits, federal salaries, and IRS refunds. Collection agencies are hounding and threatening these veterans believing they have a license to avoid collection agency requirements in the various states. Veterans are unaware of their rights, because the VA is still collecting despite the mandate in the 1989 Veteran Benefits Amendments (Public Law 101-237, 38 U.S.C. 3102) that much of this debt be waived. The VA still tells the veterans when waivers are granted that this constitutes tax liability and that they will notify the IRS. This, of course, discourages many waiver applications. The VA has imposed upon many destitute veterans thousands of dollars of tax liability that cannot be paid or even discharged in bankruptcy (as the original debt could have been).

Here are a few examples from this week's mail:

Rev. Tom Hale writes that he lost his home in Texas because the VA greatly over-assessed it, and it could not be sold when he moved to Washington to assume the ministry of a local church. He offered to compromise the $17,000 claim with the VA by borrowing $8,000 in cash which the VA refused to accept. Our law firm is now doing his bankruptcy--we will make $500, and the government loses $8,000. On February 28, 1991, the VA threatened suit against Rev. Hale not telling him about the new waiver rights he has. A collection agency (not licensed in Washington) threatened him with suit on February 6, 1991 representing to him that they were the federal government.

Kenneth Gourneau writes on March 4, 1991 after learning that the Whitehead case had cleared his debt to the VA (after his waiver appeal was denied):

> "Nothing happened for about five months, then BANG, a letter arrived saying my appeal was denied. That letter almost killed me as I even contemplated suicide and then Thank God I suffered a heart attack instead."

Zane Jones, a Korean war veteran purchased a home in Arizona in 1980. He sold the home a year later to a person who assumed his loan. In 1989, the loan was in default and the foreclosure was in 1990. On January 14, 1991, he was first notified of a VA claim for $15,400. The assertion of the claim violates the VA's own policies that require notice to the veteran in

advance of its foreclosure and a release from liability if an assuming purchaser is credit worth (which means they pay the loan for at least one year). The lenders loss was $9,215.70. The VA paid to the lender $12,215.70, yet the VA demanded $15,403.00 from Jones.

Another veteran, 100% disabled, sent $10,000 in post-dated checks to the VA's collection agency last week. He has no way to cover these checks and now is at risk for a criminal violation if the checks bounce when deposited. This procedure violates the Federal Fair Debt Collection Practices Act, and this veteran had a complete defense to the deficiency debt.

ATTORNEY ASSISTANCE

I strongly support legislative changes to allow veterans to obtain legal advice at all stages of any VA debt collection. Such a right is a fundamental right accorded to the lowest criminal in our society for free if they are destitute. I urge this not because either I or my fellow attorneys might profit from this change. Many attorneys provide pro bono service, but many veterans are also able to pay for assistance. The issues as to the validity of deficiency debt are complicated and require a knowledge of state debtor-creditor law, federal bankruptcy law, real estate law, contract law, tax law, and financial management. Veterans receive much bad advice from collection agencies who work for the VA (such as that federal debts are not dischargeable in bankruptcy nor can they be waived). VA-designated representatives are frequently unable to answer complex questions. Finally, there is no sound policy reason for denying this fundamental right to veterans. The present restriction on hiring counsel allows the VA an unfair advantage not necessary to its role as protector of veterans. The Fourth Circuit Court of Appeals recently reviewed the law and recommended that the numerous policy reasons supporting no restriction be directed to the lawmakers rather than the courts. *See Bahnmiller v. Derwinski*, 923 F.2d 1085, (4th Cir. 1991).

RECOMMENDATIONS

1. Veterans should be free to retain attorneys whenever the government makes a claim against them. No other federal agency has prevented its debtors from defending themselves with attorneys.

2. An immediate moratorium on debt collection on home loan deficiency claims should be declared until the VA can properly determine who should be required to pay these claims (*i.e.*, the fraud and bad faith & cases). Most all the existing debt should be waived under P.L. 101-237, yet

the VA still is collecting under determinations made under the old guidelines. Few veterans are aware of their rights, and the VA is not contacting these veterans to tell them the law has changed. The VA could potentially be ordered by a court to refund everything collected until the congressional mandate is followed.

3. The VA should use neutral hearing examiners in waiver hearings rather than the very persons on staff charged with the duty to collect. Veterans get no fair hearing that would comport with the well-defined due process requirements. In most instances, the veteran's case is presented into a tape recorder, transcribed, and mailed to another regional office. The VA does not put on its case but rather relies upon the "hearing officer" to establish and protect the VA's interests. Again, this practice could be successfully challenged in court requiring millions in refunds where due process has not been provided. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254 (1969).

4. 38 U.S.C. 3114(c) should be repealed. This statute allows the VA to off-set a claim against a veteran forever who happens to have a right to disability or VA pension regardless of any statute of limitation. Any other veteran in the same situation who is not owed a benefit by the VA is protected by a six-year federal statute of limitations, 28 U.S.C. 2415. This is a serious denial of equal protection of the laws and could subject the VA to substantial court-ordered restitution. *See, e.g. Quiban v. Veterans Administration*, 713 F. Supp. 436 (D.D.C. 1989).[2]

5. VA servicing guidelines and leniency regulation should be rigorously enforced. This alone would save the taxpayers millions and save thousands of veterans their homes. The GAO recently found that in Washington State the VA's use of judicial foreclosures so a theoretical deficiency could be obtained (after two years of litigation and a one-year, rent-free redemption period in a typical foreclosure) costs the taxpayers over $11,000 more each time than in the less costly non-judicial method. *See* GAO Report, Increased Use of Alternatives to Foreclosure Could Reduce VA's Losses., GAO 94-4 (December 1989) at p. 38 ff. Most veterans would gladly deed back the property or make part payments. Lenders rarely permit what the VA regulations allow. The GAO study also found that the Seattle

[2]38 U.S.C. 3205, mandating that the VA withhold compensation from incompetent veterans who have money in the bank and who are not hospitalized also poses serious equal protection problems.

regional office alone could have saved the taxpayers $6.2 million in 1987 fiscal year by merely using the non-judicial process. *Id.* at p. 42. Nationwide, the saving would be staggering.

CONCLUSION

The VA's debt collection program costs the taxpayers much more than its brings in. What it does bring in is a cruel indignity to the soldiers who have put their lives on the line for their country. Much of the deficiency debt was caused by military transfer, reserve activation, or hardship beyond the control of the well-meaning veteran. In short, we make money by abandoning this costly policy. But most fundamentally, we can treat our soldiers and veterans fairly for their contribution to our country's greatness.

TESTIMONY OF
BRUCE S. DEMING

Van Ness, Feldman & Curtis, P.C.
Washington, D.C.

before the
Subcommittee on Housing and
Memorial Affairs
House Committee on Veterans' Affairs

March 14, 1991

Mr. Chairman, I wish to thank the Committee for the opportunity to testify here today regarding matters related to debt collection proceedings arising out of the DVA's home loan guarantee program. My name is Bruce S. Deming, and I am an attorney practicing with the law firm of Van Ness, Feldman & Curtis here in Washington, D.C. My firm has been involved in pro bono representation of several individual veterans, as well as the Vietnam Veterans of America, Inc. The veterans that I represent have been seeking to establish the right to be represented by counsel in administrative debt collection proceedings initiated against them by the Department of Veterans' Affairs ("DVA").1/

We applaud the Committee's interest in reviewing the waiver provisions of the DVA's home loan guarantee program. As the members of this Subcommittee are well aware, current practices raise a number of significant issues for veterans. I am here today to address a single, discrete issue which relates to DVA debt collection proceedings, particularly those stemming from home loan foreclosures. Simply put, the issue is whether American veterans should have the right to hire and be represented by counsel, if they so choose, when facing administrative debt collection proceedings initiated against them by the Department of Veterans' Affairs.

1/ The DVA is, of course, the successor cabinet-level department to what was formerly the Veterans' Administration. For the sake of simplicity in my testimony, I will use the term "DVA" to refer to both the present Department and its predecessor agency, the "VA."

Throughout our history, Congress has recognized the sacrifice and hardships endured by veterans in service to their country, and has created important veterans programs to assist in the transition and return to productive civilian life. But today, hundreds of thousands of these veterans face an extreme predicament. Many veterans who put their lives at risk to protect our freedoms now find that they are being denied one of those fundamental freedoms: that no person shall be deprived of his property without due process of law.

These are the veterans who are charged with owing debts to the Department of Veterans' Affairs. Once targeted, they are swiftly caught up in an aggressive DVA collection process with an intimidating and impressive array of sanctions, and are compelled by DVA policy to defend themselves without the benefit of a competent lawyer. The consequences are all too often what you would imagine: the veteran forfeits valuable property or property rights without ever really knowing why, and often under circumstances where the allegation of debt may be legally invalid or factually erroneous. Mr. Chairman, we believe there are compelling reasons why this should change, and urge the Committee to report legislation to resolve this matter.[2/]

Background

In recent years, it has been the DVA's position that veterans subject to agency debt collection are barred from hiring defense counsel. This position results from the DVA's reading of the long-standing $10 attorneys fee restrictions enacted following the Civil War, and amended in 1988 by the Veterans' Judicial Review Act.[3/]

2/ Last year, legislation was introduced in the House (H.R. 5169) and in the Senate (S. 2615) to amend the attorneys fee statutes (38 U.S.C. §§ 3404, 3405) to exempt DVA administrative debt collection proceedings from the reach of those statutes. This legislation was supported by the Veterans of Foreign Wars, the American Legion, and the Vietnam Veterans of America, Inc. Neither bill was ultimately enacted into law.

3/ 38 U.S.C. §§ 3404, 3405 (1988).

This has not always been the DVA's position. For a period of ten years, beginning in 1976, the Department of Veterans' Benefits Manual (M21-1) expressly exempted debt collection proceedings from the reach of the attorneys fee provisions.[4/] Abruptly, in May of 1986, the DVA issued a formal General Counsel Memorandum reversing its position, and applying the infamous $10 attorneys fee limit to all administrative proceedings before the agency, including those for administrative debt collection.[5/] Under this policy, veterans were effectively barred from hiring defense counsel.

Need For A Change: Policy and Equity

There are important reasons why the agency's policy should be corrected, both from the standpoint of sound policy and fundamental fairness. In large measure, these reasons stem from the fundamental nature of debt collection itself.

There is a world of difference between a benefits claim initiated by a veteran, and a debt collection proceeding initiated against a veteran by the federal government. As you have pointed out in the past Mr. Chairman, in the affirmative claims proceeding, the veteran is often assisted by the DVA in the preparation and processing of his application. In appropriate cases, the DVA further obligates itself, by regulation, to give the veteran the "benefit of the doubt" in deciding claims applications. Thus, it can be stated that the overall scheme for affirmative claims adjudication is essentially "non-adversarial" in nature.[6/]

4/ Attachment 1.

5/ Attachment 2.

6/ This view was articulated by the Supreme Court in Walters v. National Association of Radiation Survivors, 473 U.S. 305, 105 S.Ct. 3180 (1985) ("NARS"). In NARS, the Supreme Court upheld the constitutionality of the former $10 attorneys fee limitation in the context of affirmative claims proceedings. The case did not involve, and the court did not address, the constitutionality of the DVA's position applying the attorneys fee restrictions in administrative debt collection proceedings.

Debt collection proceedings, unlike "claims" proceedings, are inherently adversarial. In debt collection cases, the DVA is the prosecutor, and the veteran is the defendant. By its own regulations, the DVA commits itself to "take aggressive action, with effective follow-up, to collect all claims for money or property arising from its activities."[7/]

This self-imposed mandate to take "aggressive action" includes a formidable array of swift, harsh sanctions brought to bear against the veteran, including garnishment of wages if the veteran is a federal employee,[8/] reporting of the debt to credit reporting agencies,[9/] referral to the Internal Revenue Service for seizure of the veteran's income tax refund,[10/] referral to private collection agencies,[11/] offsetting other benefits the veteran may be receiving (including disability benefits to which the veteran may be clinging for survival),[12/] or causing the U.S. Department of Justice to institute judicial proceedings against the veteran.[13/] Furthermore, as was brought to light in hearings before this Subcommittee last year, debt collection activities can harm the careers of some veterans still in active service.[14/] In some circumstances, debt collection proceedings can jeopardize an individual's security clearance.

Thus, Mr. Chairman, it is one thing to apply for, and be denied a DVA-guaranteed home loan. It is quite another to face onerous sanctions employed through the full authority and massive

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7/ 38 C.F.R. § 1.910 (1989).

8/ 5 U.S.C. § 5514, 38 C.F.R. 1.980 (1988).

9/ 31 U.S.C. § 3711(f)(1), 38 C.F.R. 1.980 (1988).

10/ 26 U.S.C. § 6402(d), 26 C.F.R. § 301.6402 - 6T (1989).

11/ P. L. 97-365, 96 Stat. 1749, 38 C.F.R. § 1.923 (1988).

12/ 38 U.S.C. § 3101, 38 C.F.R. § 1.912a (1988).

13/ 31 U.S.C. § 3711, 38 C.F.R. § 1.950 (1988).

14/ See testimony of in-service personnel before the Subcommittee on Housing and Memorial Affairs, House Committee on Veterans' Affairs, April 26, 1990.

resources of the federal government, and to face serious legal and financial jeopardy alone, without the ability to hire and be represented by legal counsel.

The Appeals Process

Once charged with owing money to the DVA, the veteran is faced not only with the substantive jeopardy of the sanctions mentioned above, but also the procedural jeopardy of the DVA appeals process. This process begins with an appeal to the appropriate DVA Regional Committee on Waivers and Compromises ("Regional Committee"), moves on to the Board of Veterans Appeals ("BVA"), and from there proceeds to the Court of Veterans Appeals and the U.S. Court of Appeals for the Federal Circuit.

In debt collection cases, the recently amended fee statutes afford the veteran little relief for several reasons. First, the veteran must 1) initiate an appeal to the Regional Committee; 2) lose his appeal to the Regional Committee; 3) initiate his appeal to the BVA; and 4) lose the appeal to the BVA before he is entitled to hire legal representation. By the time the veteran is entitled to hire counsel, the attorney must overcome an evidentiary burden to produce "new and material evidence" in order to "reopen" the proceeding.[15/] All factual determinations with respect to the veteran's case will have been already decided. Thus, the veteran is systematically denied access to counsel at the stages of the process when he most needs a lawyer's advice, i.e. at the initial stages of the appeals process.

In order to protect his substantive and procedural rights through this complicated, and at times highly technical process, the veteran requires the advice of competent legal counsel. Aside from the veteran's obvious need to understand the applicable DVA statutes and regulations, numerous complex issues of state law may be involved. For example, as the Subcommittee

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15/ P.L. 100-687, 102 Stat. 4105, 4106, 4111 (1988).

is aware, matters of state law are directly relevant to the procedures employed when home loan foreclosure occurs, and the property under a DVA-guaranteed mortgage is sold at a deficiency. Under those circumstances, the veteran's rights and obligations to the Government may hinge directly on compliance with state foreclosure and sale laws. Yet, due to the DVA's application of the attorneys fee statutes to debt collection cases, the veteran is effectively barred from learning anything about his rights and obligations. Thus, the veteran is literally deprived of his ability to defend himself effectively.

As a result of current DVA policy, veterans and their families are denied the ability to obtain competent legal representation, and hence learn of their legal rights and responsibilities. Thus, when suddenly faced with the full weight, authority and resources of the United States Government marshalled against them, they must "go it alone." This not only prejudices the rights of these veterans to a full and fair adjudication of their liability for these alleged "debts," but also causes emotional trauma to veterans and their families.

Frequent letters from the Federal Government threatening everything from destruction of the veteran's credit rating, to referral to the IRS and the Justice Department, cause fear, uncertainty, and utter humiliation to the veteran affected.[16/] I have witnessed these effects, and they are often devastating. Significantly, these impacts are made worse where, as the direct result of DVA policy, the veteran has no one to turn to for legal advice and guidance.

Judicial Proceedings To Date Have Not Remedied The Problem

In November of 1989, the United States District Court for the Eastern District of Virginia issued its decision in the case of Bahnmiller et al. v. Derwinski, et al., 724 F. Supp. 1208 (E.D. Va. 1989). The law suit was brought by several individual

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16/ See Attachment 3.

plaintiffs, along with the Vietnam Veterans of America, Inc., challenging the DVA's interpretation of the statutory attorneys fee restrictions, and its application of those restrictions to debt collection cases. I represented the plaintiffs. This suit resulted in vindication of one of the three named plaintiffs, and some limited relief for a distinct class of affected veterans. Because of the deference courts must pay to administrative agencies, however, this litigation did not result in a complete reversal of the DVA's policy.

Following issuance of the Bahnmiller decision, and while that case was pending on appeal to the U.S. Court of Appeals for the Fourth Circuit ("Fourth Circuit"), the DVA's General Counsel issued a new Precedent Opinion.[17/] While this new opinion purports to "clarify" the DVA's existing policy on this matter in light of the Bahnmiller decision, it marks what appears to be a significant shift in the agency's interpretation of the fee statutes.

This opinion was seized upon by the Fourth Circuit when it issued its January, 1991 decision in the Bahnmiller case. Although it upheld the lower court's decision to affirm the DVA's interpretation of the attorneys fee statutes, the Fourth Circuit broadly interpreted the new General Counsel opinion, holding that the "the DVA's post judgment concession of a large part of the relief sought by individual appellants Frye and Bahnmiller renders this controversy moot in part."[18/]

As observed by the Fourth Circuit, the DVA General Counsel opinion now provides that when a veteran challenges the existence or amount of a DVA home loan debt, the attorneys fee restrictions do not apply. Nor do they apply when the DVA proceeds against a veteran with collection sanctions, such as wage garnishment,

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17/ O.G.C. Precedent Opinion 19-89 (issued December 12, 1989). See Attachment 4.

18/ Bahnmiller et al. v. Derwinski et al., supra, 923 F.2d 1085 (4th Cir. 1991), No. 90-1712, Slip Op. at 10.

referral to collection agencies, and the like. Importantly, however, the strict attorneys fee restrictions still apply in cases where the veteran simply applies for a waiver, and still apply in all "overpayments" (i.e. debt collection) cases which arise outside of the home loan guarantee area.[19/]

We are, of course, pleased with the limited relief granted under the Fourth Circuit's ruling. The court probably went as far as it could consonant with its obligations to defer to the agency. Nevertheless, both the court's opinion and the DVA's most recent general counsel opinion on these issues remain confusing as to how and when a veteran may retain legal counsel in debt cases.

Several areas of confusion remain. For example, the Fourth Circuit held that the fee limits do not apply in "Stage 2" of debt cases. (The "Stage 1/Stage 2" distinction does not exist in DVA procedures; rather, it is a distinction created by the District Court in Bahnmiller for ease of analysis.) Under the Fourth Circuit's analysis, "Stage 2" occurs where 1) the veteran disputes the existence of the debt; or 2) where debt collection sanctions such as referral to credit agencies, wage garnishment or offset of disability benefits are initiated by the DVA. The court maintained, however, that the limits do apply in "Stage 1" of debt proceedings, i.e. where the veteran applies for a waiver of the indebtedness before the VA's Regional Committee on Waivers and Compromises.

As you might expect, this seemingly simple abstract distinction is not easily applied in practice. For example, it is not clear how the court's ruling would apply where the DVA threatens or carries out sanctions in waiver cases, while the veteran's appeal or application for waiver remains pending. The regulations do expressly permit the DVA to go forward with

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19/ These include debt collection cases arising from alleged "overpayments" associated with disability compensation, DVA educational grants, and other veterans' benefits.

sanctions notwithstanding a pending appeal,[20] and as affected veterans can tell you, it is standard procedure for the DVA to threaten harsh sanctions against the veteran in order to encourage immediate repayment.[21] At some point, the veterans becomes subject to the adversarial "Stage 2" phase in the collections process, but it is unclear from the Bahnmiller decision as to whether agency threats to impose sanctions are sufficient to trigger the "Stage 2" relationship, thereby allowing a veteran to hire a lawyer.

A second area of confusion rests with the issue of appealing the actual existence and/or legal validity of a debt. For example, it is quite common for a veteran to challenge the validity or amount of the debt, and at the same time apply for a repayment waiver to preserve that option should his challenge to the validity of the debt be unsuccessful. Thus, if a veteran challenges the existence of the debt, and at the same time applies for a waiver, is he entitled to hire counsel? Must the lawyer limit his representation to matters solely concerning the validity of the debt, or does the act of disputing the debt relieve the veteran from the constraints of the fee limits across the board?[22]

Mr. Chairman, these and other questions concerning the applicability of the attorneys fee restrictions in debt collection cases remain unanswered. As a result, although DVA appears to have softened its position in response to litigation, there is now more confusion than ever as to precisely when veterans facing debt collection may hire an attorney, and when they cannot. The DVA's confusing interpretations generate an

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20/ 38 C.F.R. § 1.911(c) (1988).

21/ For examples of such letters, see Attachment 3.

22/ A reasonable argument can be made that yes, a lawyer can represent the defendant veteran in both disputing the debt, and applying for a waiver, so long as the fee arrangement between attorney and client specifies that no fees are being paid or received in connection with representation concerning the waiver application.

atmosphere of uncertainty in which attorneys will continue to refuse representation in these cases, precisely because of the potential for criminal liability. It is time for this unfortunate situation to be rectified once and for all, before still more veterans lose valuable rights -- to say nothing of their homes and credit ratings -- for lack of effective legal representation.

Finally, it remains unclear as to whether the DVA will maintain its current (i.e. latest) position on the fee limits, or revisit the issue again as it has so many times in recent years. As the courts recognize, the DVA has taken numerous and inconsistent positions in its never ending efforts to "clarify" the meaning and scope of the attorneys fee limitations in debt collection cases.

Recommended Action

On behalf of the veterans I have represented, I urge this Subcommittee to consider enactment of an amendment to the language of the attorneys fee statutes that would legislatively establish the rights of veterans to obtain legal counsel when the Government initiates administrative debt collection proeedings against them -- a right that for other Americans has been constitutionally guaranteed. To date, attempts for comprehensive judicial relief have been unsuccessful, and the agency's inconsistency on this issue has created an uncertain atmosphere in which veterans and their prospective attorneys possess no clear guidance as to what is allowed and what is not. A legislative remedy is the only remedy that will truly guarantee veterans access to legal counsel in defending against these debt collection claims which so substantially affect their lives.

Mr. Chairman, this is not a case of a handout, a benefit, a subsidy, or a favor. This is a case of a fundamental right most Americans take for granted. Veterans fought to guarantee these rights for all Americans, and it is fundamentally unfair to force them to confront an adversarial, aggressive debt collection process with so severe a handicap.

I thank you again for the opportunity to testify here today, and would be delighted to answer any questions you may have.

Attachment 1

c 346, dtd 1/15/33

(3) **Attorney.** When a claimant informs the VA that a declaration of representation is to be revoked, the attorney concerned will be informed [by the correspondence clerk] of the revocation. The declaration in file will be annotated to indicate the revocation and the authority therefor [(See also par. 3.03b re action when a declaration of representation is received and there is a prior unrevoked declaration or power of attorney.)]

b. **Presumption of Valid Claim Based on a Revoked Power of Attorney.** Cases may be encountered in which it will be necessary to validate an informal claim filed by a service organization prior to the date of receipt in the VA of a superseding VA Form 23-22 in favor of another service organization. In the absence of evidence to the contrary, the existence, on the date such informal claim was filed, of a valid power of attorney in favor of the service organization which filed it, will be presumed.

3.09 VALIDITY OF POWER OF ATTORNEY AFTER DEATH OF VETERAN

In death cases, an organization previously designated by a veteran may continue to be recognized for a reasonable period in the representation of survivors unless the claimant has designated another representative. (VARs 525(D) and 5628(A))

3.10 REVIEW OF [CLAIMS FOLDERS BY HOLDERS OF POWER OF ATTORNEY

a. Review of claims folders by the holder of the current power of attorney or declaration of representation is permitted within the regional office (VAR 525(B)(1)) as follows:

(1) **Service Organizations.** Accredited representatives of the designated organization may review claims folders upon requisition to the correspondence clerk, except as to cases in which the power of attorney is "limited" (par. 3.06). Under a limited power of attorney, the claims folder will be referred to the Veterans Services Officer with a specific request for contact with the representative of the requesting organization and arrangements for review as permitted under VAR 525(A)(2).

NOTE 1. For procedure applicable to review of rating decisions by a service organization, see paragraph 45.13.

NOTE 2. The existence of a power of attorney to an organization does not permit review by an accredited representative of his or her own claims file unless conducted under the same conditions as specified in subparagraph 2 below.

(2) **Attorneys and Agents.** All claims folder review will be conducted under the control of designated VA personnel.]

3.11 FILING POWER OF ATTORNEY OR DECLARATION OF REPRESENTATION

The [correspondence clerk] will acknowledge receipt of a declaration of representation or power of attorney and file it in the claims folder. When a declaration of representation or power of attorney is first received in Adjudication, it will be referred to [the correspondence clerk] for this action when the claims folder is returned to file.

3.12 AWARD TO ATTORNEY OR AGENT

a. [**Amount of Fee.** Except when prohibited by law (see par. 3.13) a fee not exceeding $10 in an original claim for monetary benefits under the statutes administered by the VA and a fee of $2 in a claim for increase for such benefits will be payable to the agent or attorney of record in an allowed claim. A fee of not more than $1 will be payable when a monetary benefit has been reinstated after being terminated or reduced.

NOTE: Although the $10 limitation is not applicable in a case in which an attorney is representing a claimant defending charges of forfeiture of rights or proceedings regarding waiver of recovery of overpayment, the amount of such fee is not determined by the VA and payment is to be made by the claimant.]

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VETERANS ADMINISTRATION

Sig. 44-9/23/87

(3) **Attorney.** When a claimant informs the VA that a declaration of representation is to be revoked, the attorney concerned will be informed by the correspondence clerk of the revocation. The declaration in file will be annotated to indicate the revocation and the authority therefor. (See also par. 3.03b re action when a declaration of representation is received and there is a prior unrevoked declaration or power of attorney.)

b. **Presumption of Valid Claim Based on a Revoked Power of Attorney.** Cases may be encountered in which it will be necessary to validate an informal claim filed by a service organization prior to the date of receipt in the VA of a superseding VA Form 21-22 in favor of another service organization. In the absence of evidence to the contrary, the existence on the date such informal claim was filed, of a valid power of attorney in favor of the service organization which filed it, will be presumed.

3.09 VALIDITY OF POWER OF ATTORNEY AFTER DEATH OF VETERAN

In death cases, an organization previously designated by a veteran may continue to be recognized for a reasonable period in the representation of survivors unless the claimant has designated another representative. (VAR's 525 D) and 5628(A))

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NOTE 1. For procedure applicable to review of rating decisions by a service organization, see paragraph 45.13

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2) **Attorneys and Agents.** All claims folder review will be conducted under the control of designated VA personnel.

3.11 FILING POWER OF ATTORNEY OR DECLARATION OF REPRESENTATION

The correspondence clerk will acknowledge receipt of a declaration of representation or power of attorney and file it in the claims folder. When a declaration of representation or power of attorney is first received in Adjudication, it will be referred to the correspondence clerk for this action when the claims folder is returned to file.

3.12 AWARD TO ATTORNEY OR AGENT

a. **Amount of Fee.** [A fee for successful prosecution of a claim for monetary benefits is payable in an amount not to exceed the amount stated in 38 U.S.C. 3404(c). Since VAR 5634 provides that the District Counsel resolves questions concerning the amount or proper payee of fees allowed, all claims for fees shall be referred to the District Counsel who shall determine the amount of any fee payable and the proper payee. If the District Counsel determines that a fee is payable, the District Counsel shall notify the Adjudication Officer in writing of the amount and to whom payable. The Authorization activity shall then proceed as provided below for deduction of the fee from benefits allowed.]

NOTE: [ ] The [fee] limitation is not applicable in a case in which an attorney is representing a claimant in defending charges of forfeiture of rights or proceedings regarding waiver of recovery of overpayment. The amount of such fee is not determined by the VA and payment is to be made by by the claimant.

3.09 VALIDITY OF POWER OF ATTORNEY AFTER DEATH OF VETERAN

In death cases, an organization previously designated by a veteran may continue to be recognized for a reasonable period in the representation of survivors unless the claimant has designated another representative. [(VA Regulations 525(D) and 5023(A))]

3.10 REVIEW OF RATING DECISION BY SERVICE ORGANIZATIONS

See paragraph 45.13.

3.11 FILING POWER OF ATTORNEY [OR DECLARATION OF REPRESENTATION]

The Administrative activity will acknowledge receipt of [a declaration of representation or] power of attorney and file it in the claims folder. [When a declaration of representation or] power of attorney is first received in Adjudication, it will be referred to Administrative activity for this action when the claims folder is returned to file.

3.12 AWARD TO [ ] ATTORNEY OR AGENT

a. Simultaneously With Award to Claimant. When an attorney fee is authorized under 38 U.S.C. 3404(c) (VA Regulation 5655) the award to the claimant (and rating decision, if required) will be prepared with an extra copy for transmission to the DPC as hard copy, by accompanying memorandum explaining the unusual feature of the award. The award will be prepared as usual authorizing the full amount of entitlement with the following statement entered in "Remarks":

"Subject to payment of $ _____ fee to _____ (Name), _____ (Address)."

b. Delayed Award Action. Award action should not be delayed pending a determination as to whether an attorney fee is payable. Where payment of the fee was withheld or overlooked, payment will be authorized by means of an amended award, with extra copy as above, at the current rate payable provided continued payment of benefits is in order. The following statement will be used:

"Subject to $ _____ attorney fee which was due and payable upon approval of award on _____ (date) to be paid to _____ (Name), _____ (Address)."

c. Two or More Claimants. If the attorney fee is to be deducted from the initial amount payable to two or more claimants, the proportionate amount to be deducted from each award will be shown in the required statement.

d. Attorney Deceased. If an attorney fee is payable but the attorney dies before payment of the fee, the usual notation will be made under "Remarks" except that the name of the attorney will be followed by the word "(deceased)." Necessary action will then be taken at the DPC to pay the fee to the estate or heirs of the deceased attorney.

VETERANS ADMINISTRATION

Department of Veterans Benefits
Veterans Administration
Washington, DC 20420

M2
Change 1

February 8, 19

Department of Veterans Benefits Manual M21-1, "Adjudication Procedure—Compensation and Pens... Dependency and Indemnity Compensation, Accrued Amounts, Burial Allowance, Special Benefits," is chan... as follows:

Page vi, paragraph 3: Add "DVB Circular 21-84-9 Revised and change 1".

Page 3-3, paragraph 3.11a NOTE: Delete "NOTE . . . by the claimant."

Page 23-i: Below entry for paragraph 23.10 add

"SUBCHAPTER III. SPECIAL ISSUE RATINGS

23.26 Special Issue Rating System 23
23.27 Identification of Specific Special Issue Ratings 23
23.28 Special Issue Rating Screen Use 23-
23.29 SIRS for Confirmed and Death Ratings 23-
23.30 Copies of SIRS Ratings 23-

NOTE: Chapter 23 is being rewritten in its entirety and subchapters I and II will be contained in a forthcom... change.

Pages 23-9 through 23-16: Insert these pages following page 23-8. Subchapter III—added to provide p... cedures for the maintenance of statistical files on ratings involving special issues. When chapter 23 is rewrit... subchapters I and II will be issued. Even though disposition instructions are cited in this change, stati... are reminded that until the moratorium on the destruction of VA records is lifted, records are to be maintai... until further notice.

Pages 49-5 and 49-6: Remove these pages and substitute pages 49-5 and 49-6 attached.

Paragraph 49.06a—revised to delete the requirement to submit copies of special issue ratings to the Central Office Compensation and Pension Service.

RESCISSION: DVB Circular 21-84-9 Revised and change 1.

R.J. VOGEL
Chief Benefits Director

Distribution: CO: RPC: 2068 plus (28), 10 copies
FD FLD: RPC: 2068 plus VBC, 1 each; VR&C Activity in ROA, 3 copies
EX: ASO and AR (included in RPC 2068)

[3.09] REVIEW OF CLAIMS FOLDERS BY HOLDERS OF POWER OF ATTORNEY

a. Review of claims folders by the holder of the current power of attorney or declaration of representation is permitte within the regional office [(38 CFR 1.525(b)(1))] as follows:

(1) Service Organizations. Accredited representatives of the designated organization may review claims folders upo requisition to the correspondence clerk, except as to cases in which the power of attorney is "limited" (par. 3.06). Under limited power of attorney, the claims folder will be referred to the Veterans Services Officer with a specific request for cor tact with the representative of the requesting organization and arrangements for review as permitted under [38 CFI 1.525(a)(2).]

NOTE 1. For procedure applicable to review of rating decisions by a service organization, see paragraph 45.13.

NOTE 2. The existence of a power of attorney to an organization does not permit review by an accredited represent ative of his or her own claims file unless conducted under the same conditions as specified in subparagraph (2) below

(2) Attorneys and Agents. All claims folder review will be conducted under the control of designated VA personnel

[3.10] FILING POWER OF ATTORNEY OR DECLARATION OF REPRESENTATION

The correspondence clerk will acknowledge receipt of a declaration of representation or power of attorney and [reverse file it in the claims folder [on the right flap.] When a declaration of representation or power of attorney is first received i Adjudication, it will be referred to the correspondence clerk for this action when the claims folder is returned to file.

[3.11] AWARD TO ATTORNEY OR AGENT

a. Amount of Fee. A fee for successful prosecution of a claim for monetary benefits is payable in an amount not to ex ceed the amount stated in 38 U.S.C. 3404(c). Since [38 CFR 14.634] provides that the District Counsel resolves questions concerning the amount or proper payee of fees allowed, all claims for fees shall be referred to the District Counsel who shall determine the amount of any fee payable and the proper payee. If the District Counsel determines that a fee is payable, the District Counsel shall notify the Adjudications Officer in writing of the amount and to whom payable. The Authorizations activity shall then proceed as provided below for deduction of the fee from benefits allowed.

~~*NOTE: The fee limitation is not applicable in a case in which an attorney is representing a claimant in defending charges of forfeiture of rights or proceedings regarding waiver of recovery of overpayment. The amount of such fee is not determined by the VA and payment is to be made by the claimant.*~~

b. Simultaneously With Award to Claimant

(1) When the District Counsel has authorized an attorney's fee and specified the amount and proper payee under 3 U.S.C. 3404(c) [(38 CFR 14.634),] the award to the claimant will be prepared as usual authorizing the full amount of en titlement with the following statement entered on the award document.

"Subject to payment of $ fee to

(Name) (Address)."

(2) The claims folder will be routed by VA Form 3230 (or OF 41) to Finance activity, Operations Section, for necessar action the payment of the fee.

Attachment 2

GENERAL COUNSEL'S OPINION, VETERANS ADMINISTRATION-OP. G.C11-86

May 5, 1986 (Opinion date)

November 24,1986 (Publication date)

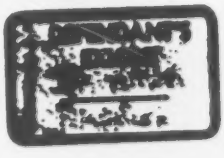
SUBJECT: Scope of Statutory Limitation on Attorneys' Fees in Claims Involving Benefits Administered by the Veterans Administration, 38 U.S.C. §§ 3404(c) and 3405

QUESTION PRESENTED: What is the scope of the attorneys'-fee limitation set forth in 38 U.S.C. §§ 3404(c) and 3405?

COMMENTS: It appears this office has not comprehensively addressed the issue before; we do so here.

Section 3405 of title 38 authorizes criminal penalties applicable to [illegible] directly or indirectly soliciting, contracting for, charging, or receiving any fee [illegible] provided in section 3404 or section 784. Section 3404 provides generally for the recognition of agents and attorneys to represent VA claimants, and section 3404(c) establishes $10 as the maximum fee for representation in claims for monetary benefits, to be paid out of the benefit award, by the VA, to the agent or attorney for a successful claimant. Section 784 pertains to litigation involving National Service Life Insurance or United States Government Life Insurance. Under section 784(g), the fee payable to an attorney for representing a prevailing party cannot exceed 10 percent of the amount recovered in litigation and must be specified in the judgment or decree issued by the court.

The legislative history of the fee-limitation statutes is set forth in some detail in two recent authoritative opinions. The first is the majority opinion in Walters v. National Association of Radiation Survivors ("NARS"), 105 S. Ct. 3180 (1985), holding that section 3404(c) is (on its face) constitutional. The second is an opinion of the Assistant Attorney General, dated January 28, 1986, on whether an Oregon plan, funded by Oregon taxpayers, to pay private attorneys who represent veterans, violates section 3404(c) or 3405. To sum up, the original purposes of the fee limit were (1) to discourage the filing of unmeritorious claims by unscrupulous lawyers (and thus conserve veterans' private resources) and (2) in the event benefits are awarded, to prevent the diversion to others of benefits intended for veterans or their survivors. Observing that the need to protect veterans from overly enthusiastic



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attorneys may have abated, the Supreme Court nevertheless states that the fee limitation has firm underpinnings in the congressional purposes to preserve the informality of VA's adjudication system and to conserve benefits for the claimant. HARS, 105 S. Ct. at 3189-92. The legislative history is helpful because neither statute is clear on its face regarding its scope; this is particularly true of section 3405.

Two threshold issues raised by the language of sections 3404 and 3405 need to be resolved at the outset. In HARS, the court impliedly construed section 3405 to apply only to agents and attorneys representing VA claimants, a conclusion clearly supported by the legislative history. This answers a basic question about section 3405, which is drafted in the broadest terms. A second question is whether the statute bars persons other than claimants [illegible] for representation of those claimants. The Assistant Attorney General, addressing the question is a close one, concluded the statutes do not bar payment of attorneys by third parties, for example, the State of Oregon. We agree with both these conclusions: Section 3405 applies only to attorneys or agents representing VA claimants and only if an attorney or agent seeks payment from a claimant over and beyond what is permissible under § 3404(c). Such interpretation is consistent with the canon of statutory construction which mandates strict construction of penal provisions against the Government. 3 Sutherland, Statutory Construction § 59.03 (4th ed. 1974).

The Agency's position, affirmed and reaffirmed both in Congress and the courts, is that the statutes serve a beneficial purpose because they help to maintain the "very supportive, nonadversarial, and informal atmosphere that is generally quite beneficial to veterans," in the claims adjudication process and appellate proceedings and to preserve "the very effective network of nonattorney resources that has evolved in the absence of significant attorney involvement in VA claims matters." See S. Rep. No. 466, 97th Cong., 2d Sess. 26, 49 (1982). Because the maximum fee is so low, attorneys by and large are discouraged from representing VA claimants. This helps to preserve the informality of benefit proceedings. Veterans are not disserved, because the Agency's policy is to "assist a claimant in developing the facts pertinent to his claim," and render a decision that grants "every benefit that can be supported in law," 38 C.F.R. § 3.103(a), and because there are trained,

3.

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knowledgeable service-organization representatives who provide free advocacy. In addition, of course, the reasonable-doubt doctrine allows for resolving close issues in the claimant's favor, 38 C.F.R. § 3.102, and hearings are readily available and conducted in a nonadversarial manner, 38 C.F.R. §§ 3103(c) and 19.157(c).

In a December 19, 1983, memorandum to the Chief Medical Director, we said, in the context of medical expense reimbursement claims, "[w]hether the focus of a benefit is in the nature of income maintenance, compensation or simply a cash reimbursement for a medical expense, the policy behind the $10 fee limitation should be consistently applied." We reemphasize that rationale here. The principle of consistent application means that the fee-limitation statutes apply in all VA administrative proceed-
[illegible] point, the subject matters listed in 38 C.F.R. §§ 19.2 and 19.3(a) (appellate jurisdiction of the Board of Veterans Appeals) cover most of the types of situations in which the fee-limitation statutes apply. To these lists we would add questions involving the National Cemetery System (e.g., eligibility for burial); equitable relief pursuant to 38 U.S.C. § 210(c)(2) and (3); and administrative debt collection. There may be other situations as well; we will not attempt to exhaustively itemize all issues administratively adjudicated by the Agency. Of course, our interpretation would include situations in which the Agency proposes to reduce or terminate benefits, as well as original and reopened claims, applications, or requests. It would also include waiver and forfeiture proceedings.

On the latter subject, this office held, in an informal 1957 memorandum, that the fee limit does not apply in forfeiture and waiver proceedings. This interpretation was subsequently encapsulated in a note accompanying paragraph 3.12 a. of the adjudication manual, M21-1, and is, in part, reflected in the Agency's current forfeiture regulations, see 38 C.F.R. § 3.905(b)(5). There is no comparable reference in our waiver regulations, see 38 C.F.R. § 1.955 et seq., however. Our debt collection form letters (e.g., FL 4-180) explain to claimants they have a right to be represented by an attorney, but go on to state that the attorney cannot be paid more than $10 and then only if the waiver request is granted.

Both waiver and forfeiture proceedings are adjudicatory in nature and are conducted in the same informal setting as other VA benefit adjudications. There is no basis in the legislative history or the policies underlying the fee-limitation statutes

4.

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for treating these situations differently. Remaining mindful of the aforementioned principle of strictly construing a penal statute, we must also assure that "the words are given their fair meaning in accord with the manifest intent of the lawmakers." United States v. Brown, 333 U.S. 18, 26 (1948). We suggest, therefore, amendment of 38 C.F.R. § 3.905(b)(5) and M21-1, para. 3.12 a. note, in accordance with this opinion.

HELD: The limitation on attorneys' fees established by 38 U.S.C. §§ 3404 and 3405 applies in all VA administrative proceedings involving beneficiaries or claimants, but does not bar payment of attorneys' fees by third parties on behalf of beneficiaries or claimants.

DONALD L. IVERS
General Counsel

NOTE: This opinion was released in the form of a memorandum to the Chief Benefits Director on May 5, 1986.

Attachment 3

Regional Office
and Insurance Center

Service Cntr, Attn: Cashier
Federal Building
P O Box 1930
St Paul MN 55111

Veterans Administration

DECEMBER 4, 1987

JAMES M SULLIVAN
12306 VALLEY HIGH RD
HERNDON VA 22070

In Reply Refer To: 333/244
File Number: 27470141
Payee Number: 00
Person Entitled: JMSULL
Deduction Code: 21

We recently called your attention to your Loan Guaranty indebtedness of $ 15,482.19. Our records indicate that we have not heard from you regarding repayment or other settlement of this debt.

The law requires us to follow certain procedures in collecting amounts due the Government. Therefore, we must caution you that non-payment of the debt will result in additional expense to you and may also result in personal inconvenience to you.

Unless you make arrangements within 90 days from the date of this letter to repay this debt, we may report your debt to a consumer reporting agency for the purpose of including the record of your failure to pay this debt on credit reports. The existence of this debt on such credit reports may adversely affect your ability to obtain credit.

The bottom portion of this letter should be returned with your remittance. A self-addressed envelope is enclosed for your convenience.

You may contact us at the following toll-free telephone number (1-800-638-2811) if you have any questions concerning this letter or to make arrangements to repay your debt. State of Minnesota residents may use (1-800-652-2191).

Please disregard this letter if you have recently written to us or paid this debt in full.

Chief, Centralized Accounts Receivable Section

Enclosure

FOR PROPER CREDIT TO YOUR ACCOUNT, PLEASE DETACH AND RETURN WITH YOUR PAYMENT

PAYMENT REMITTANCE

#27470141#0021101319211321827 #27470141 0021 101319211321827 1867890 0

* FILE NO.	27470141	AMOUNT ENCLOSED	ENTER YOUR ACCOUNT NUMBER ABOVE ONLY IF YOU ARE USING A WINDOW ENVELOPE. PLEASE ENCLOSE YOUR ZIP CODE.
PAYEE NO.	00	$	
PERSON ENTITLED	JMSULL	YOUR TELEPHONE NO. (Include Area Code)	
DEDUCTION CODE	21		

* Please include this number on your check or money order.

Regional Office
and Insurance Center

Bishop Henry Whipple
Federal Building
P.O. Box 1930
St. Paul MN 55111

Veterans Administration

OCT 6 1988

SEPTEMBER 1, 1988

JAMES M SULLIVAN
12306 VALLEY HIGH RD
HERNDON VA 22070

In Reply Refer To: 335/24a
File Number: 27470141
Payee Number: 00
Person Entitled: JMSULL
Deduction Code: 21

We have written to you on several occasions about your Loan Guaranty debt of $ 19,482.19. It is now urgent that you contact this office immediately regarding settlement of the debt.

We have authority to accept a lesser amount in full settlement of your debt. Careful consideration will be given to an offer of any reasonable amount in relation to your financial status. A compromise offer will not be considered unless accompanied by a properly completed VA Form 4-5655, Financial Status Report. VA Form 4-5655 is enclosed for this purpose along with a self-addressed envelope.

Your debt will be referred to the United States Attorney for appropriate legal action within 30 days from the date of this letter unless you pay your debt in full, make satisfactory arrangements to pay by installments or submit a reasonable compromise offer, prior to the expiration of the 30 days. This referral will result in a one-time administrative charge to you of $ 93.19 (subject to change). This referral may also result in court action and the addition of U.S. Marshal fees, court costs, and possibly interest to your debt.

Unless you make arrangements within 60 days from the date of this letter to repay this debt, we will report your debt to a consumer reporting agency for the purpose of including the record of your failure to pay this debt in credit reports. The inclusion of this debt in such credit reports may adversely affect your ability to obtain credit. Once your debt has been reported to a consumer reporting agency, you will be informed of the specific information released to the consumer reporting agency. You may also request the name and address of each consumer reporting agency to which information on your debt was released by the Veterans Administration.

You may contact us at the following toll-free telephone number (1-800-626-2912) if you have any questions concerning this letter or to make arrangements to repay your debt. State of Minnesota residents may use (1-800-692-2121).

Please disregard this letter if you have recently written to us or paid this debt in full.

Chief, Centralized Accounts Receivable Section

FOR PROPER CREDIT TO YOUR ACCOUNT, PLEASE DETACH AND RETURN WITH YOUR PAYMENT

Veterans Administration — PAYMENT REMITTANCE

#27470141 0021 10131921121227 #27470141 0021 10131921121227 3190000 4

FILE NO	27470141	AMOUNT ENCLOSED	ENTER YOUR CURRENT ADDRESS BELOW ONLY IF THE ONE ABOVE IS INCORRECT. PLEASE DO NOT USE YOUR ZIP CODE.
PAYEE NO	00	$	
PERSON ENTITLED	JMSULL	YOUR TELEPHONE NO. (Include Area Code)	
DEDUCTION CODE	21		

Veterans
Administration
MINNEAPOLIS
DROP SHIPMENT
AUTHORIZATION
FALSCHTLD

53

Regional Office
and Insurance Center

Veterans Administration

SEPTEMBER 12, 1988

JAMES T SULLIVAN
12306 VALLEY HIGH RD
HERNDON VA 22070

Please Refer To: 319 Loa
File Number: 27470141
Payee Number: 00
Person Entitled: JMSULL
Deduction Code: 21

We have written to you on several occasions about your Loan Guaranty debt of $ 15,672.90. This amount consists of $ 15,482.19 principal, $ 190.71 interest, and $ 0.00 administrative cost of collection fees. It is now urgent that you contact this office immediately regarding settlement of the debt. You have 60 days from the date of this letter to present evidence that all or part of this indebtedness is not past due or is not legally enforceable.

If you have filed for bankruptcy and the automatic stay is in effect, you may not be subject to offset provided you notify this office of the bankruptcy within 60 days of the date of this letter.

Unless you take action to liquidate this debt or you have filed for bankruptcy, we intend to refer the debt to the Internal Revenue Service (IRS) for collection. Any federal income tax refund to which you may be entitled may be offset in full or partial satisfaction of this indebtedness or any other indebtedness owed by you to the Veterans Administration.

If you file a joint tax return you should contact the IRS before filing your return regarding the steps to take to protect the share of the refund which may be payable to your spouse who may not be liable for the debt.

You may contact us at the following toll-free telephone number (1-800-626-2912) to make arrangements to repay your debt. State of Minnesota residents may use (1-800-692-2121).

Chief, Centralized Accounts Receivable Division

FOR PROPER CREDIT TO YOUR ACCOUNT, PLEASE DETACH AND RETURN WITH YOUR PAYMEN

Veterans Administration — PAYMENT REMITTANCE

#27470141 0021 101319211212277 27470141 0021 101319211212277 1567290 0

FILE NO.	27470141	AMOUNT ENCLOSED	ENTER YOUR CURRENT ADDRESS BELOW ONLY IF THE ONE ABOVE IS INCORRECT PLEASE INCLUDE YOUR ZIP CODE
PAYEE NO.	00	$	
PERSON ENTITLED	JMSULL	YOUR TELEPHONE NO. INCLUDE AREA CODE	53
DEDUCTION CODE	21		

IF A CHECK IS ISSUED, THIS NUMBER MAY APPEAR ON THE CHECK

Veterans Administration

Regional Office and Insurance Center
Bishop Henry Whipple Federal Building
Fort Snelling
St. Paul, Minnesota 55111

Official Business
Penalty for private use
$300
Address Correction Requested
DO NOT FORWARD

MINNEAPOLIS
BRCP SHIPMENT
AUTHORIZATION 39
RESORTED FIRST-CLASS

US OFFICIAL MAIL

SEPTEMBER 12, 1980

JAMES M SULLIVAN
12306 VALLEY HIGH RD
HERNDON VA 22070

60-60
110

80

Attachment 4

Veterans Administration

Memorandum

DEC 12 1989

O.G.C. Precedent 19-89

From: General Counsel (022)

Subj: Applicability of Statutory Limitation on Attorneys' Fees at 38 U.S.C. §§ 3404 and 3405 to Administrative Debt-Collection Matters

To: Chief Benefits Director (20)

QUESTIONS PRESENTED:

(a) Have the amendments to 38 U.S.C. §§ 3404 and 3405 made by the Veterans' Judicial Review Act, Pub. L. No. 100-687, § 104, 102 Stat. 4105, 4108 (1988), changed the scope of the statutory limitation on attorneys' fees?

(b) Does the statutory limitation on attorneys' fees, in its original form and as amended, apply generally to administrative debt-collection matters?

(c) To what extent is the statutory limitation on attorneys' fees applicable to administrative debt-collection matters arising out of loan-guaranty debts?

COMMENTS:

1. The scope of the statutory limitation on attorneys' fees appearing in 38 U.S.C. §§ 3404 and 3405 ("the fee limitation") was addressed in a previous published General Counsel's opinion, Op. G.C. 11-86 (11-24-86). Since that opinion was issued, the sections in question were amended by the Veterans' Judicial Review Act, Pub. L. No. 100-687, § 104, 102 Stat. 4105, 4108 (1988). Further, questions have been raised concerning the appropriateness of applying the fee limitation to administrative debt-collection matters involving the Department of Veterans Affairs (VA), particularly in the loan-guaranty area. A recent U.S. district court decision has provided additional guidance on this issue. Accordingly, we believe clarification of Op. G.C. 11-86 is in order at this time.

2. The fee limitation appears in chapter 59, "Agents and Attorneys," in title 38, United States Code, which is titled "Veterans' Benefits." Section 3405 provides that whoever solicits, contracts for, charges, or receives any fee or compensation, except as provided in sections 3404 or 784 of title 38, is subject to criminal penalties. Section 784 provides for attorneys' fees in insurance cases. Section 3404 generally deals with the recognition of agents and attorneys for the preparation, presentation, and prosecution of claims under laws administered by VA. Prior to amendment by Pub. L. No. 100-687, subsection (c) of section 3404 provided that the Secretary of Veterans Affairs "shall determine and pay fees to

agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by [VA]" and that such fees (1) shall be determined and paid as prescribed by the Secretary, (2) "shall not exceed $10 with respect to any one claim," and (3) "shall be deducted from monetary benefits claimed and allowed." The recognized objective of the fee limitation to preserve the informality of VA's adjudication system, Walters v. National Association of Radiation Survivors, 473 U.S. 305, 321-26 (1985), strongly suggests the limit was intended to apply to all VA benefit proceedings of an adjudicatory nature.

3. In Op. G.C. 11-86, which was issued before the statutes were amended, this office held that the fee limitation at 38 U.S.C. §§ 3404 and 3405 applied to all VA administrative proceedings involving beneficiaries or claimants, but did not bar payment of attorneys' fees by third parties on behalf of beneficiaries or claimants. This office also held that because waiver and forfeiture proceedings "are adjudicatory in nature and are conducted in the same informal setting as other VA benefit adjudications," the fee limitation should apply to these types of proceedings as well. Op. G.C. 11-86 at 3. Decisions in these proceedings are administratively appealable to the Board of Veterans Appeals (BVA) pursuant to 38 C.F.R. § 19.2. Applying the principle of consistent application, the opinion held that the fee limitation should apply to all VA administrative proceedings involving beneficiaries and claimants, including those relating to administrative debt collection. Id. at 3.

4. Although not specifically addressed in the opinion, it has been and remains this office's position that the fee limitation does not apply to court proceedings, whether initiated by VA or by a claimant. Thus, this office interprets the statutes as allowing a claimant to hire an attorney for the defense of a court action brought by VA against the claimant or for the purpose of bringing such an action against VA.

5. As amended by the Veterans' Judicial Review Act, the prohibition in section 3405 is the same as in the prior version of that statute, although the penalties for violation of the provision have been changed. Section 3404 was amended in new subsection (c)(1) to provide that "[i]n connection with a proceeding before [VA] with respect to benefits under laws administered by [VA], a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which the Board of Veterans' Appeals

3.

Chief Benefits Director (20)

first makes a final decision in the case." After a claimant has gone through the VA administrative process once, there is no limit on attorneys' fees, other than reasonableness as determined under subsection (c)(2), unless the claimant and the attorney agree upon a contingency fee to be paid out of past-due benefits, in which case the limit is 20 percent of such award, pursuant to subsection (d)(1).

6. The plain language of the statute as amended indicates that no fee is permitted to be charged by attorneys in connection with proceedings before VA "with respect to benefits" under laws which VA administers, until the BVA has rendered a decision. This language is somewhat broader than the language in the original statute and suggests no intention on the part of Congress to disturb VA's interpretation of the scope of the fee limitation.

7. No exception was made in the section, as amended, for administrative debt-collection proceedings, even though testimony at congressional hearings on judicial-review legislation called to Congress' attention VA's interpretation that the fee limitation in its then-current form applied to such proceedings. See Judicial Review Legislation: Hearings on S. 11 and S. 2292 before the Senate Committee on Veterans' Affairs, 100th Cong., 2d Sess. 244 (1988) (statement of Richard E. O'Dell, President, and Paul S. Egan, Legislative Director, Vietnam Veterans of America). Members of Congress are presumed to have knowledge of statements made at committee hearings and of the matters described. 2A N. Singer, Sutherland Statutory Construction § 48.10 (4th ed. 1984). Further, the legislature is presumed to know the prior construction of an act being amended. 1A N. Singer, Sutherland Statutory Construction § 22.35 (4th ed. 1985). Failure to amend a statute in the manner requested is thus evidence that the Congress intended to adopt the existing construction. See generally id.; cf. Reed v. The Yaka, 373 U.S. 410, 414-15 (1963) (Congressional failure to enact legislation in response to court decisions must be considered in construing meaning of statute).

8. The applicability of the fee limitation (both before and after its amendment) to VA administrative debt-collection proceedings was addressed in the recent U.S. district court decision in Bahnmiller v. Derwinski, No. 88-0732-A (E.D. Va. Nov. 8, 1989). In a well-reasoned opinion, the United States District Court for the Eastern District of Virginia held that

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Chief Benefits Director (20)

the fee limitation, before and after its amendment, applies to debt-collection proceedings within VA through what it termed "Stage 1" of the VA debt-collection process. "Stage 1" includes proceedings involving, generally, dispute of the existence or amount of the debt, waiver of indebtedness, and appeal of decisions involving these matters. Such proceedings necessarily include administrative recoupment of overpayments to beneficiaries through offset of VA benefits. The court further held that the fee limitation does not apply "when the VA seeks legal remedies beyond the administrative context." Slip opinion at 20. The court indicated that the limit does not apply when VA reports a debt to credit reporting agencies, seeks attachment of a Federal tax refund, garnishes the salary of a veteran employed by the Federal government, sets the debt off against payments by VA to the debtor other than current salary or benefit payments, e.g., lump-sum leave payments, pursuant to 38 C.F.R. § 1.912, or causes the Department of Justice (DoJ) to initiate judicial proceedings. Id. at 5. The court characterized these proceedings as "Stage 2" of the process.

9. Thus, the court in Bahnmiller essentially divided administrative debt-collection proceedings instituted by VA into two categories, those which are part of VA's informal, nonadversarial adjudicatory functions and those which are not. Attorneys and agents who represent VA beneficiaries and claimants in the first category are subject to the fee limitation, while those involved in the second category of proceedings are not subject to the limitation. As the court noted, this dichotomy is consistent with the statutory language and purpose of the sections and is supported by the legislative history of both versions of the statute. The court found this dichotomy "fair and sensible" and noted that at no stage of the proceedings were veterans left unaided in their pursuit or defense of benefits. Id. at 25-26.

10. We agree with the analysis of the district court in Bahnmiller. We conclude that the amendments made by the Veterans' Judicial Review Act did not change the scope of the statutory limitation on attorneys' fees and that the limitation applies to debt-collection matters in the same manner under either form of the statute. Both in its original form and as amended, the fee limitation is applicable to all adjudicative and appellate proceedings before VA with respect to benefits, including proceedings involving administrative debt collection. Included are proceedings relating to such matters as waiver and

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Chief Benefits Director (20)

the recovery of benefit overpayments by offset. However, as the fee limitation was intended to protect the informal, nonadversarial nature of VA's adjudicative process, it is not applicable to advice or assistance as to matters outside this process. Thus, veterans can, for example, hire attorneys to bring or defend legal actions or to advise them concerning their rights with respect to third parties without regard to the prohibitions of 38 U.S.C. §§ 3404 and 3405.

11. Questions have been raised concerning the applicability of the fee limitation to administrative debt collection arising out of VA's loan-guaranty program. Although the Bahnmiller case arose in the loan-guaranty area, the court did not discuss in any detail the particulars of that program as it relates to administrative debt collection. Thus, additional clarification is in order here.

12. In applying the fee limitation to administrative debt collection in the loan-guaranty program, we are guided by the principles discussed above and enunciated by the court in Bahnmiller. Thus, we interpret the fee limitation as applying only to those proceedings before VA relating to the collection of debts arising out of the loan-guaranty program which are adjudicated in VA's informal, nonadversarial process and which involve matters appealable to the BVA. It does not apply to actions taken by VA outside of this process.

13. Debts may arise under the loan-guaranty program when a veteran receives a VA loan guaranty on a home mortgage loan and the loan goes into default. VA pays the lender pursuant to the loan guaranty and seeks reimbursement from the veteran based upon the loan-guaranty agreement. Thus, VA makes a claim against the veteran based upon a contractual agreement. No decision is made by a rating board, no adjudication proceedings are conducted, and VA's determinations concerning the existence and amount of the indebtedness are not appealable to the BVA. Such proceedings relating to the enforcement of contractual rights can fairly be considered proceedings outside VA's adjudicative process, or "Stage 2" proceedings using the Bahnmiller court's terminology. The fee limitation is inapplicable to such proceedings. Similarly, when VA attempts to collect loan-guaranty debts by means such as referral to the Internal Revenue Service, garnishment of Federal wages, or referral to DoJ, the proceedings may also be deemed "Stage 2" proceedings outside the scope of the fee limitation.

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Chief Benefits Director (20)

14. In contrast, when a veteran exercises the right to seek a waiver of indebtedness arising under the loan-guaranty contract, administrative adjudication proceedings are commenced. A decision is made by a committee on waivers and compromises which is appealable to the BVA. These proceedings are adjudicative proceedings before VA ("Stage 1" in the court's terminology) to which the fee limitation applies.

HELD:

The amendments to 38 U.S.C. §§ 3404 and 3405 made by the Veterans' Judicial Review Act, Pub. L. No. 100-687, § 104, 102 Stat. 4105, 4108 (1988), while changing the nature of the limitation on attorneys' fees, do not affect the scope of the fee limitation's applicability. Both in its original and amended form, the fee limitation applies to agents and attorneys practicing before the Department of Veterans Affairs (VA) in administrative proceedings relating to veterans' benefits. These proceedings include administrative debt-collection proceedings and proceedings involving requests for waiver of indebtedness. The fee limitation does not, however, apply to proceedings outside VA's benefit-adjudication process, such as VA's efforts to determine and enforce its contractual rights arising out of its loan-guaranty program, to set off debts against Federal payments other than VA-benefit payments, or to collect debts through referral to other Federal agencies or to credit reporting agencies.

Raoul L. Carroll

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUN 12 1991

The Honorable G. V. (Sonny) Montgomery
Chairman, Committee on Veterans'
Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Enclosed please find the Department's responses to the follow-up questions which you forwarded on behalf of the Honorable Harley O. Staggers, Jr., to the March 14, 1991, hearing of the Subcommittee on Housing and Memorial Affairs on Pub. L. No. 101-237 as it applies to debt waivers and attorney fee restrictions in regard to loan guaranty indebtedness. Thank you for the opportunity to provide this additional information for the record.

Sincerely yours,

Edward J. Derwinski

Enclosure
EJD/flc

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSE

QUESTIONS SUBMITTED BY HONORABLE HARLEY O. STAGGERS, JR.
TO THE DEPARTMENT OF VETERANS AFFAIRS

1. Regarding the statistics showing 68% average rate of waivers, please provide a breakdown by regional office.

Response: The breakdown of statistics by regional office for FY '91 (as of 3/31/91) is as follows:

	STATION	REQUESTS CONSIDERED	WAIVERS GRANTED	% GRANTED
1.	Muskogee	1105	1039	94%
2.	Houston	2073	1871	90
3.	Hartford	79	70	87
4.	Baltimore	158	138	87
5.	New Orleans	698	598	86
6.	Winston-Salem	739	636	86
7.	Roanoke	237	202	85
8.	Atlanta	1034	840	81
9.	Manchester	84	67	80
10.	Denver (Cheyene)	1367	1036	76
11.	Wichita	127	96	76
12.	Little Rock	420	303	75
13.	Boise	188	139	74
14.	New York	440	327	74
15.	White River Jct.	38	28	74
16.	Fargo	51	37	73
17.	Salt Lake City	162	116	72
18.	Anchorage	48	34	71
19.	Columbia	471	328	70
20.	St. Paul	271	191	70
21.	Chicago	724	495	68
22.	Louisville	333	227	68
23.	Pittsburgh	258	175	68
24.	Los Angeles	935	631	67
25.	San Francisco	587	392	67
26.	Portland	300	197	66
27.	Waco	1494	990	66
28.	Philadelphia	205	134	65
29.	Togus	36	23	64
30.	St. Louis	503	318	63
31.	Newark	251	157	62
32.	Detroit	575	353	61
33.	Indianapolis	415	253	61
34.	Washington, DC	312	189	61
35.	Cleveland	721	432	60
36.	Milwaukee	190	114	60
37.	Providence	79	45	60
38.	Boston	214	126	59
39.	San Diego	256	150	59
40.	Buffalo	275	161	58
41.	Montgomery	516	297	58
42.	Nashville	504	293	58

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43. Phoenix	614	355	58
44. San Juan	481	280	58
45. Seattle	264	154	58
46. Wilmington	19	11	58
47. Des Moines	310	176	57
48. Lincoln	332	190	57
49. Reno	77	44	57
50. Sioux Falls	106	61	57
51. Jackson	481	267	55
52. Honolulu	40	21	52
53. Ft. Harrison	33	15	45
54. Albuquerque	249	105	42
55. St. Petersburg	1682	694	41
56. Huntington	192	67	35
57. Manila	65	10	15
TOTAL	24,418	16,698	68%

2. Do these office-to-office statistics suggest that the rate of granting waivers varies significantly between offices?

Response: Yes, there is significant variation.

3. If so, what explains the variations?

Response: The variations are attributable in part to the new waiver standards themselves. The new standards create a dramatic change to our waiver consideration process including discontinuance of standard formulas in this process. Thus, our new waiver standards are broad and do not contain a specific formula for their application. Each member of a Committee on Waivers and Compromises must rely on his/her own individual experience and knowledge to apply these broad standards. However, we do expect that the waiver rate will become more consistent nationwide with further experience and training. Variations in the waiver rate can also be partially attributed to workload andeconomic conditions in certain parts of the country.

4) Please provide a breakdown of the rate of waivers allowed since 1988 for each panel of the Board of Veterans' Appeals that handles debt collection waivers.

Response: We have analyzed data pertaining to BVA dispositions of appeals for waiver of indebtedness decided during the period of FY 1988 through the end of the first half of FY 1991. BVA data groups these waiver appeals into two major categories: (1) waivers relating to indebtedness arising from loan guaranty transactions and (2) waivers relating to indebtedness arising from all other VA programs. During the period of FY 1988 to mid-FY 1991, BVA decided over 10,000 waiver appeals, 4,665 of which were loan guaranty debt waiver appeals and 5, 529 of which

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were waiver of indebtedness arising from programs other than loan guaranty. Although nearly all BVA Board Sections decided some waiver of indebtedness appeals, eight BVA Sections handled nearly 95% of this workload. Four of these eight Board Sections decided nearly all of the loan guaranty waiver appeals and the other four decided nearly all of the waiver appeals arising from programs other than loan guaranty. We have attached tables breaking down BVA dispositions on a Board Section basis for both categories of waiver appeals. Also attached are more detailed breakdowns on a yearly basis for each of the eight Board Sections whose decisions in these two waiver categories comprised the vast majority of BVA waiver appeals decisions.

5) Do these panel-to-panel statistics suggest that the rate of granting waivers varies significantly between BVA panels?

Response: As indicated in the attached tables, there clearly has been some degree of variance between Board Sections' dispositions of appeals for waiver of indebtedness, particularly with respect to loan guaranty debt waiver appeals.

6) If so, what explains the variations?

Response: Some variation in these statistics is to be expected given that each case is different and is composed of different evidence. The Board of Veterans' Appeals is divided into 21 sections, each having the authority to enter final decisions (38 U.S.C. §§ 4002 and 4003). Each case presented to the Board is decided on the basis of the individual facts in that case, and previously issued decisions are binding only to the specific case decided (38 C.F.R. §19.197). Board members are bound by laws, regulations, and other legal criteria but have a great deal of latitude in exercising fact-finding judgment (38 U.S.C. §4004).

It has also been incumbent on the Board to strive for consistency in the decision making process, but given the discretionary fact-finding authority of the Board sections and Board management's reluctance to tamper with the members' quasi-judicial independence, it has sometimes been elusive.

We do believe that these decisions were decided within the law as it existed at the time they were made. Further, as it became apparent through statistical trends and quality review procedures that inconsistencies in the philosophical approach to these cases may have existed, members were brought together and a common approach achieved. The recently appointed Chairman has recognized the need for enhanced uniformity of decision making and has incorporated it as part of his strategic vision for the board. The following is an extract from BVA's strategic plan:

> The foundation of BVA's strategic plan will be a focus on quality, timeliness and consistency. Legally sound, well reasoned decisions that clearly expresses the Board's findings must typify the basic product of the VA appellate system.

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> Each BVA decision must be capable of withstanding the intense scrutiny to which it may be subjected under judicial review and each decision must be constructed in adherence to guidelines established by statute and articulated by the Court of Veterans Appeals. Our focus on quality, timeliness and consistency must permeate our entire organization and must apply to every aspect of the services that we render. We believe that a long-term BVA commitment to these goals is the single best contribution that we could make in support of the Department's strategic goals.

Further, the Chairman has reviewed the subject of uniformity and consistency individually with each person he has recommended for appointment to the Board and has received assurances from each that they share this objective.

7) To ensure that those veterans who may be most likely able to take advantage of the new waiver criteria in Public Law 101-237 and potentially obtain refunds:

(a) Why not ask the private debt collection agencies who are telephoning veterans at their homes to tell veterans that they can apply under the new law?

Response: Under current procedures, the collection agencies must return an account to VA if the veteran requests a waiver. They receive no compensation for any actions they have taken to locate or contact the veteran at that point. Asking them to solicit waiver requests would be contrary to their goal of collecting delinquent debts and under the terms of the current contract they could not be required to provide such information.

b) Why not mail notices to the veterans identified in the DVA Inspector General reports that show that lenders may have been guilty of violating DVA underwriting policies?

c) Why not automatically reconsider the cases of those veterans who are currently repaying debts since these veterans may be entitled to refunds of the amounts repaid?

d) Why not mail notices to those veterns currently repaying debts to inform them that they can apply for a waiver under the new criteria?

Response: In order to be fair and equitable to all debtors, any notification issued regarding new regulations on waiver should be sent to everyone who may be affected by the change. If VA were to initiate actions specified in questions (b), (c), and (d), the result would be preferential treatment of specific groups of veterans. As stated in the March 14, 1991 hearing, many of our accounts are old where we have been

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unsuccessful in locating the veteran. Therefore, a mass mailing to all debtor accounts on file is not considered feasible. In regard to question (c), automatically reconsidering cases, VA is not staffed to handle the workload this action would generate.

(e) Instead of withholding from the public the rules under which the program has been implemented, why hasn't the department published at least "interim" rules in the Federal Register?

Response: The publication of proposed and final regulations can often be a lengthy process. In addition, we must obtain OMB approval before publication of both the proposed and final version of regulations. The publication of interim regulations, although less time consuming than the process for final regulations, still requires a lengthy concurrence and publication process. We have prepared a proposed revision to our regulations which we anticipate will be published by July 1991.

We felt that the quickest method to provide information and guidance on the new standards to the regional office employees and to veterans through our employees was by publication of circulars and a training guide. These publications were also distributed to the service organization representatives at each of the stations. Those veterans whose waiver requests were in either the initial or appellate stages of consideration on or after December 18, 1989, had their requests automatically considered under the new waiver standards. Although veterans who received a final waiver denial prior to the change in law were not directly notified of this change, all stations have been advised to use any means available to provide information to the general public on reconsideration of prior waiver denials. There is no time limit for a veteran to request that a waiver denial be reconsidered under the new standards.

8) Do any of the form letters currently in use to describe the appellate rights of alleged debtors describe the option of applying for a retroactive release of liability under 38 C.F.R. 36.4323(g)?

Response: No, our form letters describing appellate rights do not address the option of applying for a retroactive release of liability. There are no specific appellate rights involved in administering retroactive releases of liability. When a claim is paid but prior to establishing an indebtedness, every veteran who failed to apply for and obtain a release of liability when the VA-guaranteed loan was assumed is automatically considered for such relief.

9) Do regional offices currently consider veterans for release of liability prior to notifying them of a debt?

Response: Yes, prior to establishing an indebtedness (and thereby initiating the collection process), the Loan Guaranty activity will determine whether or not the original veteran-borrower is eligible for retroactive release of liability.

6.

10) If regional offices do currently consider veterans for release of liability, do they send notice of their decision to veterans and include a notice of appellate rights?

Response: When VA reviews a case for a possible retroactive release of liability, this is done because the veteran did not obtain a release incident to the disposition of the property securing the loan. Because of this and the fact that the veteran did not actually apply for a retroactive release of liability, we do not believe it is necessary to notify him or her if the release is granted. However, if a veteran has learned of a transferee's default, is unable to prevent loan termination, and specifically requests notice of VA's subsequent determination on retroactive release of liability, a VA regional office will comply with such a request.

11) What are the advantages of obtaining a release of liability over obtaining a waiver? Please address the tax consequences and impact on credit reports.

Response: IRS Code section 61(a)(12) requires that income from the discharge of indebtedness (such as waiver) is to be included in the gross income of a taxpayer-debtor. This is taxpayer responsibility inposed by IRS. VA does not, at this time, report waivers on loan guaranty debts to IRS for verification of taxpayer reporting. In the case of a release of liability, the debtor is released of liability to VA and no debt would be charged against them. In terms of credit reports, if a release of liability was granted after VA referred a debt to a credit reporting agency, we ask the credit bureau to remove the debt from their records. When a waiver is granted, we notify the credit reporting agency that a waiver was granted. These debts are still considered valid debts for credit extension purposes. As part of a Government-wide credit improvement policy, lenders are required to report defaults and loan terminations to credit bureaus. In some states, foreclosure statutes require the naming of the original borrowers in the foreclosure proceedings. In these states credit bureaus will search public records and may find that foreclosure proceedings have been instituted against the original veteran, not the assumer, and this information may appear on the veteran's credit record. However, if a veteran obtained a release of liability, he/she may be able to successfully have the credit information removed from the credit record or provide a comment to be included in their credit file explaining that a release of liability was obtained.

12) If the DVA denies retroactive release of liability if the transferee does not maintain a good pay history for at least 12 months, has the DVA published that rule in the Federal Register or otherwise informed veterans of that rule?

Response: VA does not require that a transferee maintain a good pay history for at least 12 months in order for a retroactive release of liability to be granted. Our procedure for determining the creditworthiness of a transferee begins with a credit report on the transferee. If we cannot obtain a report that reflects the buyer's credit record at the time of transfer, other factors are then considered

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to establish whether or not the transferee was a satisfactory credit risk at the time he or she acquired the property securing the loan. One of these factors is the payment history of the transferee and the 12 month timeframe is used as a general guideline. VA policy is that doubtful cases should be resolved in favor of releasing the original veteran-borrower from liability.

13) If a release of liability is granted at the time of transfer of the property, is the entitlement to future loan guaranty restored?

Response: Entitlement is not restored in connection with a release of liability, unless the assumer is an eligible veteran with sufficient entitlement to substitute for that of the selling veteran in accordance with 38 U.S.C. 1802(b)(2). If a transferee subsequently pays the VA loan in full, then the entitlement used by the original veteran in obtaining the loan may be restored. If the transferee defaults on the loan and VA is required to pay a claim under loan guaranty, then entitlement may not be restored under 38 U.S.C. 1802(b)(1)(B) until the Government is reimbursed for the amount of claim paid.

14) If a retroactive release of liability is granted, is entitlement to loan guaranty restored?

Response: Entitlement is not restored in connection with a retroactive release of liability until the Government is reimbursed for the amount of claim paid under loan guaranty.

15) If entitlement is not restored, what is the difference in the nature of the releases (one contemporaneous, one retroactive) that warrants the different treatment?

Response: VA encourages veterans to obtain an 1813(a) release of liability in connection with the disposition of the homes securing their VA loans. An 1813(a) release of liability is advantageous to the veteran because there is no further liability in the event of a default by a transferee owner. If a release is not obtained under 1813(a), then the circumstances at the time of default may preclude VA granting an 1813(b) retroactive release. Some examples include:

(1) If a veteran has not applied for an 1813(a) release prior to completing the sale of his or her home, then the transferee may agree to assume the loan, but may not "assume by contract all of the obligations of the veteran under the terms of the instruments creating and securing the loan" as required by both 1813(a) and (b). In those states where the foreclosure procedure does not allow for the establishment of a deficiency against the obligor following loan termination, there would be no one liable under subrogation, and only the original veteran liable under indemnity. Because there is no transferee liable to VA, a retroactive release may not be granted.

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(2) Even if a transferee assumes the veteran's indemnity liability through a clause in the deed at the time of transfer, that same transferee may later be discharged of all obligations under Chapter 7 of the Bankruptcy Act. In that case there would be no liable transferee and VA could not grant an 1813(b) retroactive release of liability. However, in that same case, if the veteran had obtained an 1813(a) release of liability in connection with the sale of the home, the transferee's subsequent discharge in bankruptcy would have no effect on the veteran's release of liability.

We agree that the effect of receiving a release of liability under the provisions of 1813(a) or (b) is the same but we are unable to discern any different treatment. The process is different but the basic criteria for approval is the same. The difference we observe is that in an 1813(a) release, there is the active and willing cooperation on the part of the veteran-seller and the buyer to meet VA's requirements for approval. In an 1813(b) release, VA must administratively do what the original veteran and assumer should have done at the time of loan assumption with respect to developing the assumer's creditworthiness.

16) Although IRS Private Letter Ruling 8839026 (Sept. 30, 1988) carries the cautionary notice that it "is addressed only to the taxpayer who requested it...[and] may not be used or cited as precedent," does the reasoning contained in it apply to most of those veterans who obtain waivers of home loan debts?

Response: Since this question involves an interpretation of the Internal Revenue Code, we believe it would be inappropriate for VA to construe an issue under the jurisdiction of IRS.

17) How much would it cost a veteran to obtain his or her own IRS private letter ruling?

Response: Refer to response to question 16. Fees imposed by IRS should be referred to that agency.

18) What is the purpose behind the notices sent by the St. Paul Regional Office to veterans who have obtained a waiver that state:

"You are reminded that a discharge of indebtedness, such as waiver, is considered taxable income and must be reported by you to the Internal Revenue Sevice (IRS). Home loan write-offs, however, are not currently reported by the DVA to the Internal Revenue Service in accordance with IRS regulations."

Response: As far as our research indicates, we have not released any form letters or computer generated letters that advised that home loan write-offs are not currently reported by VA to IRS in accordance with IRS regulations. If that statement was included in other correspondence, it was an isolated occurrence and does not reflect current policy. Based on

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recommendations made at the March 14, 1991 hearing, we are changing the language in our waiver notices to read as follows:

> "You are reminded that a discharge of indebtedness, such as a waiver, may be considered by the Internal Revenue Service (IRS) as taxable income and may be reportable by you to the IRS. A report of this waiver may be provided by the Department of Veterans Affairs to the Internal Revenue Sevice in accordance with IRS regulations."

19) What is the significance to veterans of the statement that the DVA is not reporting the waiver to IRS? Do you intend veterans to understand that they also are not obligated to report the amount waived?

Response: As stated in question #18, VA is not advising veterans that waivers are not being reported to IRS. It is not VA's intent to advise veterans of specific reporting requirements for tax purposes. Our notice is intended to make veterans aware that a waiver of a debt may have tax implications.

20) At what point in time is a veteran's debt reported to a credit bureau?

Response: The law requires that Agencies provide a debtor a 60 day notice that he/she may be reported to a credit reporting agency. This notice is included in VA's third collection letter. If a debtor receives the third collection letter and does not respond, he/she will be referred to credit reporting agencies after 60 days have lapsed.

21) How do you notify a veteran of his debt?

Response: Veterans are notified of a debt by letter which is issued by the Department's Centralized Accounts Receivable Division located in the VA's Regional Office and Insurance Center in St. Paul, Minnesota.

22) If the debt is waived or if a veteran is issued a retroactive release of liability, at what point do you notify the credit bureaus?

Response: If VA referred a loan guaranty debt to a credit reporting agency and either a waiver or a retroactive release of liability is granted, the credit reporting agencies are notified by the Centralized Accounts Receivable Division when they receive notification from the regional office of the waiver or the release of liability.

23) Have the number of appeals filed with respect to loan guaranty indebtedness declined?

Response: We do not keep separate statistical data on appeals filed on waiver denial of loan guaranty indebtedness.

10.

24) What are you doing about older debts? Have you gone back and reviewed them? Have you notified these veterans of the new waiver criteria?

Response: VA has taken no special action to review older debts and notify that group of veterans of the new waiver criteria. We have however, issued two circulars, one in February 1990 and one in January 1991 addressing the new waiver standards and the issue of reconsideration of waivers. VA also issued a press release to all Directors and Public Affairs Officers on August 21, 1990 addressing veterans eligibility for reconsideration of waiver. Regular meetings are held between regional office personnel and service organizations where this information is discussed and disseminated. Station directors routinely release noteworthy information that affects veterans benefits to local newspapers, radio and television stations and include the topics in presentations to local veterans groups.

25) How much in outstanding loan guaranty debts do you have today vs. several years ago?

Response: At the end of fiscal year 1987, VA had approximately $1.4 billion in outstanding loan guaranty debt. That figure has risen to $2.3 billion as of the end of February 1991.

26) Mr. Leen states that a loan guaranty indebtedness cannot be discharged in bankruptcy. Is this true?

Response: We are unaware of any provision of the Bankruptcy Code which excludes VA home loan debts from discharge.

27) Last year, the Paralyzed Veterans of America expressed particular concern in behalf of divorced veterans who have lost title to a home as part of a property settlement and urged that "equity and good conscience" standards be applied for waiver purposes. Are your policies for divorced veterans liable for housing debts created by ex-spouses?

Response: Regardless of whether the veteran still has title in the property, a veteran who has a VA home loan program debt has the right to request waiver. The standard of "equity and good conscience" would be applied in considering such a request.

28) At the hearing of March 14, Mr. Kane indicated that the Department is unable to get a definitive answer from IRS regarding taxation of loan guaranty waivers. Why, therefore, is taxation of loan guaranty waivers mentioned in your form letters. Please share with the Committee whatever information you have on this subject.

11.

Response: The purpose of addressing taxation of loan guaranty debts in our form letters is to make veterans aware that waiver of a debt may have tax implications. In informal discussions with IRS, we were advised that debt waivers are generally presumed to be taxable, although a variety of factors might render certain debt waivers nontaxable. In the absence of specific guidance from IRS, we believe we must notify veterans that waiver of a debt has possible tax implications which the veteran should discuss with a tax advisor or the IRS.

29) It was further stated at the hearing that compensation waivers over the amount of $600 are reported to IRS. What specific authority do you have from IRS in this regard?

Response: We have no specific authority from IRS in this regard. We are reporting compensation waivers to IRS based on a memorandum dated November 17, 1983 from the Office of Management and Budget. The subject of that memorandum was "Reporting Written-Off Debt to IRS". It stated that under Internal Revenue Code section 61(a)(12), income from the discharge of indebtedness is to be included in the gross income of taxpayer-debtor. OMB advised, that based on that code, IRS was asking all Federal Agencies to report, beginning with calendar year 1983, all debt discharged with a total dollar value of $600 or more for the year.

30) Has Public Law 101-237 had any impact on the amounts collected? (Comparison by years)

Response: It appears the law has had little or no impact on collections. Collections and offsets for fiscal year 1989 were $56.5 million. That figure increased to $69.2 million in fiscal year 1990. In comparing an October through February timeframe for fiscal years 1990 and 1991, we show a $1 million dollar difference in collections and offsets. (FY 1991 - $24.8 / FY 1990 $25.8)

31) Are the length of cases (collection accounts) shortened as result of the implication of Public Law 101-237? Does this have any implications on staffing needs?

Response: VA has not performed any reviews to study the implication of Public Law 101-237 on collection timeframes but we see no evidence of shortened collection periods as a result of the Public Law unless of course waiver is granted. Unless VA were to experience a drastic decrease in workload as a result of the Public Law, we see no implications on staffing needs.

Attachment 1

Board of Veterans' Appeals
Disposition of Debt Waiver Appeals (other than Loan Guaranty)
FY 1988 through 1st Half FY 1991
BVA Composite; Sorted by Board Section

BOARD SECTION	TOTAL DECISIONS	--Allowed--- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
1	0	0	N/A	0	N/A	0	N/A	0	N/A
2	5	2	40.0%	1	20.0%	2	40.0%	0	0.0%
3	15	3	20.0%	5	33.3%	7	46.7%	0	0.0%
4	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%
5	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%
6	9	3	33.3%	1	11.1%	5	55.6%	0	0.0%
7	1,233	182	14.8%	428	34.7%	602	48.8%	21	1.7%
8	0	0	N/A	0	N/A	0	N/A	0	N/A
9	2	1	50.0%	1	50.0%	0	0.0%	0	0.0%
10	0	0	N/A	0	N/A	0	N/A	0	N/A
11	20	5	25.0%	1	5.0%	14	70.0%	0	0.0%
12	1,115	191	17.1%	578	51.8%	331	29.7%	15	1.3%
13	40	6	15.0%	17	42.5%	17	42.5%	0	0.0%
14	0	0	N/A	0	N/A	0	N/A	0	N/A
15	103	8	7.8%	28	27.2%	63	61.2%	4	3.9%
16	0	0	N/A	0	N/A	0	N/A	0	N/A
17	1,347	152	11.3%	658	48.8%	519	38.5%	18	1.3%
18	0	0	N/A	0	N/A	0	N/A	0	N/A
19	0	0	N/A	0	N/A	0	N/A	0	N/A
20	1,442	242	16.8%	638	44.2%	537	37.2%	25	1.7%
21	2	0	0.0%	1	50.0%	1	50.0%	0	0.0%
22	0	0	N/A	0	N/A	0	N/A	0	N/A
23	0	0	N/A	0	N/A	0	N/A	0	N/A
Travel Boards	24	6	25.0%	7	29.2%	11	45.8%	0	0.0%
SUBTOTAL OF ALL SECTIONS	5,359	802	15.0%	2,365	44.1%	2,109	39.4%	83	1.5%
ADMINISTRATIVE DISPOSITIONS	170	0	0.0%	122	82.3%	0	0.0%	48	17.7%
BVA TOTAL	5,529	802	14.5%	2,487	45.0%	2,109	38.1%	131	2.4%

Board of Veterans' Appeals
Disposition of Debt Waiver Appeals (other than Loan Guaranty)
FY 1988 through 1st Half FY 1991
BVA Composite; Sorted by Decision Volume

Attachment 2

BOARD SECTION	TOTAL DECISIONS	--Allowed--- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
20	1,442	242	16.8%	638	44.2%	537	37.2%	25	1.7%
17	1,347	152	11.3%	658	48.8%	519	38.5%	18	1.3%
7	1,233	182	14.8%	428	34.7%	602	48.8%	21	1.7%
12	1,115	191	17.1%	578	51.8%	331	29.7%	15	1.3%
15	103	8	7.8%	28	27.2%	63	61.2%	4	3.9%
13	40	6	15.0%	17	42.5%	17	42.5%	0	0.0%
Travel Boards	24	6	25.0%	7	29.2%	11	45.8%	0	0.0%
11	20	5	25.0%	1	5.0%	14	70.0%	0	0.0%
3	15	3	20.0%	5	33.3%	7	46.7%	0	0.0%
6	9	3	33.3%	1	11.1%	5	55.6%	0	0.0%
2	5	2	40.0%	1	20.0%	2	40.0%	0	0.0%
21	2	0	0.0%	1	50.0%	1	50.0%	0	0.0%
9	2	1	50.0%	1	50.0%	0	0.0%	0	0.0%
4	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%
5	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%
1	0	0	N/A	0	N/A	0	N/A	0	N/A
23	0	0	N/A	0	N/A	0	N/A	0	N/A
22	0	0	N/A	0	N/A	0	N/A	0	N/A
19	0	0	N/A	0	N/A	0	N/A	0	N/A
10	0	0	N/A	0	N/A	0	N/A	0	N/A
8	0	0	N/A	0	N/A	0	N/A	0	N/A
14	0	0	N/A	0	N/A	0	N/A	0	N/A
18	0	0	N/A	0	N/A	0	N/A	0	N/A
16	0	0	N/A	0	N/A	0	N/A	0	N/A
SUBTOTAL OF ALL SECTIONS	5,359	802	15.0%	2,365	44.1%	2,109	39.4%	83	1.5%
ADMINISTRATIVE DISPOSITIONS	170	0	0.0%	122	82.3%	0	0.0%	48	17.7%
BVA TOTAL	5,529	802	14.5%	2,487	45.0%	2,109	38.1%	131	2.4%

Board of Veterans' Appeals
Disposition of Loan Guaranty Debt Waiver Appeals
FY 1988 through 1st Half FY 1991
BVA Composite; Sorted by Board Section

Attachment 3

BOARD SECTION	TOTAL DECISIONS	--Allowed--- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
1	4	0	0.0%	0	0.0%	4	100.0%	0	0.0%
2	1,546	300	19.4%	455	29.4%	774	50.1%	17	1.1%
3	328	78	23.8%	214	65.2%	34	10.4%	2	0.6%
4	0	0	N/A	0	N/A	0	N/A	0	N/A
5	0	0	N/A	0	N/A	0	N/A	0	N/A
6	1,870	717	38.3%	549	29.4%	599	32.0%	5	0.3%
7	2	0	0.0%	1	50.0%	1	50.0%	0	0.0%
8	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%
9	0	0	N/A	0	N/A	0	N/A	0	N/A
10	0	0	N/A	0	N/A	0	N/A	0	N/A
11	677	272	40.2%	241	35.6%	161	23.8%	3	0.4%
12	6	1	16.7%	1	16.7%	3	50.0%	1	16.7%
13	2	0	0.0%	0	0.0%	2	100.0%	0	0.0%
14	1	0	0.0%	0	0.0%	1	100.0%	0	0.0%
15	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%
16	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%
17	6	1	16.7%	1	16.7%	4	66.7%	0	0.0%
18	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%
19	1	0	0.0%	0	0.0%	1	100.0%	0	0.0%
20	8	4	50.0%	3	37.5%	1	12.5%	0	0.0%
21	0	0	N/A	0	N/A	0	N/A	0	N/A
22	0	0	N/A	0	N/A	0	N/A	0	N/A
23	14	5	35.7%	8	57.1%	1	7.1%	0	0.0%
Travel Boards	32	9	28.1%	14	43.8%	9	28.1%	0	0.0%
SUBTOTAL OF ALL SECTIONS	4,501	1,388	30.8%	1,490	33.1%	1,595	35.4%	28	0.6%
ADMINISTRATIVE DISPOSITIONS	164	0	0.0%	153	82.3%	0	0.0%	11	17.7%
BVA TOTAL	4,665	1,388	29.8%	1,643	35.2%	1,595	34.2%	39	0.8%

Board of Veterans' Appeals
Disposition of Loan Guaranty Debt Waiver Appeals
FY 1988 through 1st Half FY 1991
BVA Composite; Sorted by Decision Volume

Attachment 4

BOARD SECTION	TOTAL DECISIONS	--Allowed--- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
6	1,870	717	38.3%	549	29.4%	599	32.0%	5	0.3%
2	1,546	300	19.4%	455	29.4%	774	50.1%	17	1.1%
11	677	272	40.2%	241	35.6%	161	23.8%	3	0.4%
3	328	78	23.8%	214	65.2%	34	10.4%	2	0.6%
Travel Boards	32	9	28.1%	14	43.8%	9	28.1%	0	0.0%
23	14	5	35.7%	8	57.1%	1	7.1%	0	0.0%
20	8	4	50.0%	3	37.5%	1	12.5%	0	0.0%
12	6	1	16.7%	1	16.7%	3	50.0%	1	16.7%
17	6	1	16.7%	1	16.7%	4	66.7%	0	0.0%
1	4	0	0.0%	0	0.0%	4	100.0%	0	0.0%
13	2	0	0.0%	0	0.0%	2	100.0%	0	0.0%
7	2	0	0.0%	1	50.0%	1	50.0%	0	0.0%
16	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%
18	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%
19	1	0	0.0%	0	0.0%	1	100.0%	0	0.0%
14	1	0	0.0%	0	0.0%	1	100.0%	0	0.0%
8	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%
15	1	0	0.0%	1	100.0%	0	0.0%	0	0.0%
22	0	0	N/A	0	N/A	0	N/A	0	N/A
4	0	0	N/A	0	N/A	0	N/A	0	N/A
10	0	0	N/A	0	N/A	0	N/A	0	N/A
9	0	0	N/A	0	N/A	0	N/A	0	N/A
5	0	0	N/A	0	N/A	0	N/A	0	N/A
21	0	0	N/A	0	N/A	0	N/A	0	N/A
SUBTOTAL OF ALL SECTIONS	**4,501**	**1,388**	**30.8%**	**1,490**	**33.1%**	**1,595**	**35.4%**	**28**	**0.6%**
ADMINISTRATIVE DISPOSITIONS	**164**	**0**	**0.0%**	**153**	**82.3%**	**0**	**0.0%**	**11**	**17.7%**
BVA TOTAL	**4,665**	**1,388**	**29.8%**	**1,643**	**35.2%**	**1,595**	**34.2%**	**39**	**0.8%**

Attachment 5

Board of Veterans' Appeals
Disposition of Debt Waiver Appeals (other than Loan Guaranty)
FY 1988 through 1st Half FY 1991
BVA Board Section 20

FISCAL YEAR	TOTAL DECISIONS	--Allowed-- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
1988	447	84	18.8%	115	25.7%	243	54.4%	5	1.1%
1989	451	79	17.5%	162	35.9%	203	45.0%	7	1.6%
1990	430	52	12.1%	297	69.1%	69	16.0%	12	2.8%
1st Half 1991	114	27	23.7%	64	56.1%	22	19.3%	1	0.9%
TOTALS	1442	242	16.8%	638	44.2%	537	37.2%	25	1.7%

Board of Veterans' Appeals
Disposition of Debt Waiver Appeals (other than Loan Guaranty)
FY 1988 through 1st Half FY 1991
BVA Board Section 17

FISCAL YEAR	TOTAL DECISIONS	--Allowed-- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
1988	453	48	10.6%	187	41.3%	217	47.9%	1	0.2%
1989	361	44	12.2%	120	33.2%	196	54.3%	1	0.3%
1990	423	48	11.3%	280	66.2%	82	19.4%	13	3.1%
1st Half 1991	110	12	10.9%	71	64.5%	24	21.8%	3	2.7%
TOTALS	1347	152	11.3%	658	48.8%	519	38.5%	18	1.3%

Attachment 7

Board of Veterans' Appeals
Disposition of Debt Waiver Appeals (other than Loan Guaranty)
FY 1988 through 1st Half FY 1991
BVA Board Section 7

FISCAL YEAR	TOTAL DECISIONS	--Allowed-- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
1988	426	68	16.0%	94	22.1%	259	60.8%	5	1.2%
1989	378	53	14.0%	84	22.2%	239	63.2%	2	0.5%
1990	337	36	10.7%	215	63.8%	74	22.0%	12	3.6%
1st Half 1991	92	25	27.2%	35	38.0%	30	32.6%	2	2.2%
TOTALS	1233	182	14.8%	428	34.7%	602	48.8%	21	1.7%

Board of Veterans' Appeals
Disposition of Debt Waiver Appeals (other than Loan Guaranty)
FY 1988 through 1st Half FY 1991
BVA Board Section 12

FISCAL YEAR	TOTAL DECISIONS	--Allowed--		--Remanded--		---Denied---		---Other---	
		No.	%	No.	%	No.	%	No.	%
1988	409	80	19.6%	147	35.9%	179	43.8%	3	0.7%
1989	344	69	20.1%	162	47.1%	111	32.3%	2	0.6%
1990	294	26	8.8%	222	75.5%	36	12.2%	10	3.4%
1st Half 1991	68	16	23.5%	47	69.1%	5	7.4%	0	0.0%
TOTALS	1115	191	17.1%	578	51.8%	331	29.7%	15	1.3%

Board of Veterans' Appeals
Disposition of Loan Guaranty Debt Waiver Appeals
FY 1988 through 1st Half FY 1991
BVA Board Section 6

FISCAL YEAR	TOTAL DECISIONS	--Allowed-- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
1988	522	135	25.9%	141	27.0%	245	46.9%	1	0.2%
1989	674	221	32.8%	224	33.2%	229	34.0%	0	0.0%
1990	517	274	53.0%	137	26.5%	104	20.1%	2	0.4%
1st Half 1991	157	87	55.4%	47	29.9%	21	13.4%	2	1.3%
TOTALS	1870	717	38.3%	549	29.4%	599	32.0%	5	0.3%

Board of Veterans' Appeals
Disposition of Loan Guaranty Debt Waiver Appeals
FY 1988 through 1st Half FY 1991
BVA Board Section 2

FISCAL YEAR	TOTAL DECISIONS	--Allowed-- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
1988	402	55	13.7%	88	21.9%	254	63.2%	5	1.2%
1989	561	89	15.9%	155	27.6%	315	56.1%	2	0.4%
1990	535	135	25.2%	199	37.2%	195	36.4%	6	1.1%
1st Half 1991	48	21	43.8%	13	27.1%	10	20.8%	4	8.3%
TOTALS	1546	300	19.4%	455	29.4%	774	50.1%	17	1.1%

Board of Veterans' Appeals
Disposition of Loan Guaranty Debt Waiver Appeals
FY 1988 through 1st Half FY 1991
BVA Board Section 11

FISCAL YEAR	TOTAL DECISIONS	--Allowed-- No.	%	--Remanded-- No.	%	---Denied--- No.	%	---Other--- No.	%
1988	0	0	N/A	0	N/A	0	N/A	0	N/A
1989	196	43	21.9%	87	44.4%	65	33.2%	1	0.5%
1990	348	152	43.7%	128	36.8%	67	19.3%	1	0.3%
1st Half 1991	133	77	57.9%	26	19.5%	29	21.8%	1	0.8%
TOTALS	677	272	40.2%	241	35.6%	161	23.8%	3	0.4%

Attachment 12

Board of Veterans' Appeals
Disposition of Loan Guaranty Debt Waiver Appeals
FY 1988 through 1st Half FY 1991
BVA Board Section 3

FISCAL YEAR	TOTAL DECISIONS	--Allowed--		--Remanded--		---Denied---		---Other---	
		No.	%	No.	%	No.	%	No.	%
1988	0	0	N/A	0	N/A	0	N/A	0	N/A
1989	0	0	N/A	0	N/A	0	N/A	0	N/A
1990	253	58	22.9%	178	70.4%	17	6.7%	0	0.0%
1st Half 1991	75	20	26.7%	36	48.0%	17	22.7%	2	2.7%
TOTALS:	328	78	23.8%	214	65.2%	34	10.4%	2	0.6%